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SUBREGIONAL COALESCENCE IN EUROPEAN REGIONAL INTEGRATION

Helen E. Hartnell*

I. INTRODUCTION

Analysts tend to view post-1989 East-West European integration through the unilateral lens of European Union (EU) enlargement or, rather more broadly, as a structural problem of integrating developed with developing countries.¹ This article will assimilate these earlier approaches, but also move beyond them, by emphasizing the view from the peripheral area of Central and Eastern Europe. Significant developments taking place there have the potential to alter our way of thinking about the process of regional economic integration, in Europe if not elsewhere. The recent trends demonstrate a coalescence² at the margins, a subregional

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¹ See, e.g., IAN & PAMELA BARNES, *THE ENLARGED EUROPEAN UNION* (1995); ANDREW EVANS, *THE INTEGRATION OF THE EUROPEAN COMMUNITY AND THIRD STATES IN EUROPE: A LEGAL ANALYSIS* (1996); Alain Guggenbühl, *The Political Economy of Association with Eastern Europe*, in *THE POLITICAL ECONOMY OF EUROPEAN INTEGRATION* 211 (Finn Laursen ed., 1995); Helen E. Hartnell, *Central/Eastern Europe: The Long and Winding Road toward European Union*, 15 *COMP. L. Y.B. INT'L BUS.* 179 (1993) [hereinafter Hartnell, *Long and Winding Road*]; Helen E. Hartnell, *Association Agreements between the EC and Central and Eastern European States*, 35 *ACTA JURIDICA HUNGARICA* 225 (1993) [hereinafter Hartnell, *Association Agreements*]; Dan Horowitz, *EC-Central/East European Relations: New Principles for a New Era*, 27 *COMMON MKT. L. REV.* 259 (1990); David Kennedy, *Turning to Market Democracy: A Tale of Two Architectures*, 32 *HARV. INT'L. L. J.* 373 (1991) [hereinafter Kennedy, *Architectures*]; David Kennedy & David E. Webb, *The Limits of Integration: Eastern Europe and the European Communities*, 30 *COMMON MKT. L. REV.* 1095 (1993); Marc Maresceau & Elisabetta Montaguti, *The Relations Between the European Union and Central and Eastern Europe: A Legal Appraisal*, 32 *COMMON MKT. L. REV.* 1327 (1995); Patrick A. Messerlin, *The EC and Central Europe: The Missed Rendez-vous of 1992?*, 1993 *ECONOMICS OF TRANSITION*, vol. 1(1), 89 (1993); Steve Peers, *An Ever-Closer Waiting Room? The Case for Eastern European Accession to the European Economic Area*, 32 *COMMON MKT. L. REV.* 187 (1995); STEFAN RICHTER, *DIE ASSOZIIERUNG OSTEUROPÄISCHER STAATEN DURCH DIE EUROPÄISCHEN GEMEINSCHAFTEN* (1993). See also Vít Bárta & Sándor Richter, *Eastern Enlargement of the European Union from the Western and from the Eastern Perspective* (unpublished 1996 manuscript, copy on file with author); ECONOMIC INTEGRATION BETWEEN UNEQUAL PARTNERS (Theodore Georgakopoulos et al. eds., 1994); Sanjay Peters, *Barriers to Regional Economic Integration between Unequal Partners: The Case of Spain and the European Union* (Quaderns de treball #19, Institut Universitari d'Estudis Europeus, 1996).

² This term was first suggested to me by Joel Trachtman. Subsequent to adopting it for my purposes, I encountered a similar usage in George Kolankiewicz, *Consensus and Competition in the Eastern Enlargement of the European Union*, 70 *INT'L AFF.* 477, 478 (1994) (stating that "apart from the largely endogenous centrifugal forces of competition impelling each country to make its way to Europe, there are increasing centripetal tendencies, mostly exogenous in nature and emanating from the

solidification, which in turn suggests the advent of a counterweight to the powerful regional integration initiatives such as the EU.³ This coalescence has caused the EU's hitherto top-down, vertical integration strategy *vis-à-vis* the countries of Central and Eastern Europe to tilt ever so slightly, towards the horizontal. The effect of this power shift is to introduce a new dynamic into the process of East-West integration, and to take one step away from monologue, and towards conversation among neighbors.

The growing importance and self-confidence of subregional initiatives in Central and Eastern Europe offer hope that future integration will rectify some of the inequities of the top-down, vertical integration model by taking a more balanced approach to solving common problems. The recent trend constitutes a positive move, economically and politically, on the part of the new democracies, which are learning to make their way in an amorphous Europe where bipolarity is mostly a memory. Coalescence falls short of more dramatic reforms that have been envisioned,⁴ but at least offers a model with which to build.

Part II of this article presents the vertical integration model deployed by the European Union *vis-à-vis* the countries of Central and Eastern Europe. Part III critiques the EU's approach by analyzing five paradoxes present in the current model: the trade paradox, the aspirational paradox, the participation paradox, the sovereignty paradox, and the competition-cooperation paradox. Part IV examines key integration developments in Central and Eastern Europe, places them in the context of the EU enlargement process, and considers the extent to which they remedy the pathologies inherent in the vertical model. And finally, Part V concludes by questioning the broader implications of these European developments.

east and west forcing [some countries] to coalesce for [their] own future benefit.”).

³ While the emphasis in this article will be on the EU, it will make occasional reference to initiatives underway in the former Union of Soviet Socialist Republics (USSR) as well. The EU exerts a much stronger economic and political pull on most (but not all) of the countries located (figuratively, if not geographically) between the Russian Federation and the West. There is, however, a move to establish an alternative to the EU. See discussion *infra* of the Commonwealth of Independent States (CIS) and related undertakings in Part IV. C.3. It would be premature to engage in detailed comparisons between the Brussels-based and the Moscow-based European integration models at this time, since the CIS integration project is still in its infancy. However, such analyses will be needed in the future, if and when the CIS model develops further.

⁴ See Kennedy, *Architectures*, *supra* note 1, at 396 (emphasizing rupture and calling for convergence of the two integration models, i.e. the international trade system, on the one hand, and the EC's internal market, on the other).

A PRELIMINARY EXCURSION INTO "PHILOSOPHIC GEOGRAPHY"⁵

The term "Eastern Europe" conjures up gray, looming images in most Western minds.⁶ Thus, one cannot invoke this geographical designation without confronting these persistent negative connotations. However much one might wish to abandon this term as a Cold War relic, the idea of Eastern Europe -- "a work of cultural creation, of intellectual artifice, of ideological self-interest and self-promotion"⁷ -- clearly precedes the Cold War.⁸ A similar dilemma attends use of the term "Central Europe," which invokes for some the frightening memory of Germany's *Mitteleuropa*,⁹ even while it represents for others an alternative to the "oppressive idea of Eastern Europe."¹⁰

Sensitivity to such historical notions is essential when writing about Europe, but does not dictate that they be taken as immutable. These "maps in the mind" surely need to be "adjusted, adapted, reconceived"¹¹ as part of the integration process. And yet, for the purposes of this article, it is expedient to employ the notions in current usage. Thus, this article will

⁵ LARRY WOLFF, *INVENTING EASTERN EUROPE: THE MAP OF CIVILIZATION ON THE MIND OF THE ENLIGHTENMENT* 6 (1994) [citing John Ledyard, *John Ledyard's Journey Through Russia and Siberia 1787-1788: The Journal and Selected Letters*, ed. Stephen D. Watrous (Madison: Univ. of Wisconsin Press, 1966)].

⁶ *Id.* at 1 ("[W]ho could see through an iron curtain and discern the shapes enveloped in shadow?"); *id.* at 2 ("Throughout the Cold War the iron curtain would be envisioned as a barrier of quarantine, separating the light of Christian civilization from whatever lurked in the shadows, and such a conception was all the more justification for not looking too closely at the lands behind."). A version of this vision pervades some Eastern minds as well. See SLAVENKA DRAKULIĆ, *CAFE EUROPA: LIFE AFTER COMMUNISM* 26 (1996) (Croatian author describes "that grey, monolithic vision of the USSR [that] is rigidly cemented in [her] mind").

⁷ Wolff, *supra* note 5, at 4. This author argues that "[i]t was Western Europe that invented Eastern Europe as its complementary other half in the eighteenth century, the age of Enlightenment. It was also the Enlightenment, with its intellectual centers in Western Europe, that cultivated and appropriated to itself the new notion of 'civilization,' . . . and . . . discovered its complement, within the same continent, in shadowed lands of backwardness, even barbarism." *Id.* See also *THE ORIGINS OF BACKWARDNESS IN EASTERN EUROPE: ECONOMICS AND POLITICS FROM THE MIDDLE AGES UNTIL THE EARLY TWENTIETH CENTURY* (Daniel Chirot ed., 1989); EDWARD W. SAID, *ORIENTALISM* (1979). Compare NEAL ASCHERSON, *BLACK SEA* 49-88 (1995) (tracing these ideas back to Herodotus).

⁸ See Wolff, *supra* note 5, at 3 ("The shadow persists, because the idea of Eastern Europe remains, even without the iron curtain . . . because that idea . . . is much older than the Cold War."). In Wolff's account, "[t]he new idea of civilization was the crucial and indispensable point of reference that made possible the consolidation and articulation of the inchoate idea of Eastern Europe in the eighteenth century." *Id.* at 12.

⁹ FRIEDRICH NAUMANN, *MITTELEUROPA* (1915).

¹⁰ Wolff, *supra* note 5, at 15. See generally Timothy Garton Ash, *Does Central Europe Exist?*, N.Y. REV. BOOKS (October 9, 1996); Timothy Garton Ash, *Mitteleuropa?*, DAEDALUS: J. AM. ACAD. ARTS & SCI., Vol. 119, No. 1, 1-21 (1990); Ferenc Fehér, *On Making Central Europe*, 3 E. EUR. POL. & SOCIETIES 412 (1989); THOMAS JÄGER, *EUROPAS NEUE ORDNUNG: MITTELEUROPA ALS ALTERNATIV?* (1990); LONNIE R. JOHNSON, *CENTRAL EUROPE: ENEMIES, NEIGHBORS, FRIENDS* (1996); *MITTELEUROPA: HISTORY AND PROSPECTS* (Peter Stirk ed., 1994).

¹¹ Wolff, *supra* note 5, at 3.

adhere to convention and use the term "Central and Eastern Europe" to include all 27 post-Cold War transition countries.¹² This term is less than perfect,¹³ but has the minor virtue of being consistent with EU usage. This article will focus on functional differences, rather than conceptual or historical ones. Still, reference will be made to a variety of geographic subgroupings, some labelled as such by the EU, and others named by the countries in Central and Eastern Europe themselves.

The main concern here is to investigate the dynamics of a relationship between a dominant integrative force -- the European Union -- and the non-member countries that are attracted with more or less force by its gravitational pull. The emphasis on the EU is not meant to belie the existence of other integrative forces in Europe,¹⁴ but rather to highlight problems in the process of European integration -- still largely conceived as one of East-West rapprochement -- and to examine the possibility of intermediation by marginal actors. This task is undertaken with an awareness of the historical notion that Central and Eastern Europe are located "not down in the depths of barbarism, but rather on the developmental scale that measured the distance between civilization and barbarism."¹⁵

This article begins by invoking the conceptual map of Europe as having two centers, namely the Brussels-based EU and the Moscow-based CIS. This fairly common vision is both oversimplified¹⁶ and problematic.¹⁷

¹² They are: Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Macedonia, Moldova, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and the Federal Republic of Yugoslavia (consisting of Serbia and Montenegro). The situation of Mongolia is not considered in this article, although the EU sometimes includes it among the beneficiaries of measures for the benefit of Central and East European countries.

¹³ It is conceptually flawed because some of the countries included belong more to Asia than to Europe. Rather than resolving any boundary disputes between Europe and Asia, the EU applies the umbrella term "CEEC" to all, but gradually differentiates various geographic areas within the mass (e.g. the Baltics, Central Asia, and Transcaucasia). Another flaw is that this umbrella term inevitably raises the question "which countries are central and which are eastern?" The tendency is to use "eastern" to refer to the former USSR, and "central" to refer to all other countries, but this convention would surely offend some former members of the USSR that identify today more strongly with Brussels than with Moscow. Lithuania, for example, has stated that it "wants to be a Central European country, not a Baltic republic." OPEN MEDIA RESEARCH INSTITUTE, DAILY DIGEST, Jan. 7, 1997 <<http://www.omri.cz/index.html>> [hereinafter OMRI]. Another puzzling question is "which Balkan countries are Balkan, and which are central European?"

¹⁴ The CIS actually draws in about half of the 27 post-Cold War transition countries noted *supra* in note 12, all of which can be described as emerging markets and many of which as emerging democracies.

¹⁵ Wolff, *supra* note 5, at 13.

¹⁶ It is oversimplified because there are other relevant non-European centers which are attractive to some of these countries (e.g. in Asia Minor, see further discussion *infra* in parts IV.D.2 and IV.D.4), and because of the new subregional initiatives, which are elaborated in Part III below.

¹⁷ Salman Rushdie has criticized a center-periphery analysis of literature as "flat earth . . . with jaded Romans at the center and frightfully gifted Hottentots and anthropophagi lurking at the edges . . . an imperial map, [and yet] Europe's empires are long gone." Salman Rushdie, *In Defense of the*

As the analysis of subregional developments shows, this dipolar, centrist map is evolving towards "a new world . . . disorder" that is "postcolonial, . . . decentered, [and] transnational . . ."¹⁸ This article will visit some of the multiple perspectives on this integration process. But even this task presupposes identification of the perspectives to be explored and clarification of the geographical terms used. This will be accomplished first through the lens of the EU association process, which establishes a set of geographical as well as functional concepts essential to the analysis, and later through the lens of subregional integration initiatives, which manifest the geographical decentering process and further the functional analysis.

II. THE EUROPEAN UNION'S INTEGRATION MODEL

A. THE ASSOCIATION PROCESS

The EU¹⁹ deploys its integration strategy *vis-à-vis* the Central and East European countries (CEECs)²⁰ primarily via the association process.²¹ An "association agreement" is a treaty entered into by the European Community (or Communities)²² with a non-member country, which involves

Novel, Yet Again, NEW YORKER, June 24, 1996, at 48, 50.

¹⁸ *Id.* (speaking about literature, which is additionally "interlingual [and] cross-cultural").

¹⁹ The focus of this article is on relations between the EU and Central and Eastern Europe; however, it should be noted that EU member states also pursue bilateral or multilateral relations with these countries in areas that fall outside exclusive EU competence. For example, France signed five economic agreements with Russia at the first meeting of the Franco-Russian Economic Commission. OMRI, *supra* note 13, Feb. 16, 1996. Austria signed a protocol on health insurance with Latvia. OMRI, *supra* note 13, Feb. 12, 1996 (Austrian specialists will give advice on legislative issues, including standards for health care and for accreditation of medical establishments).

²⁰ The acronym "CEEC" is commonly used by the EU in English-language texts. The acronym "PECO" often crops up in EU texts which are in (or have been translated from) the French language (i.e. *Pays Européennes Centrales et Orientales*).

²¹ Other vehicles of Western European policy towards the CEECs, such as the Council of Europe, the North Atlantic Treaty Organization (NATO), the Organization on Cooperation and Security in Europe (OCSE), the Organization on Economic Cooperation and Development (OECD), and the Western European Union (WEU), are beyond the scope of this article. It is conceded, however, that the current dynamics of integration in Europe cannot be fully comprehended without taking into account the security concerns that have crystallized around the decision at the Madrid Summit in July 1997 to invite certain CEECs (i.e. Czech Republic, Hungary, and Poland) to join NATO. See also Kirchberg Declaration of 9 May 1994, Communique of WEU Council of Ministers, AGENCE EUR. DOCS., May 11, 1994 (announcing the opening of the WEU to CEECs as "associate partners"); Declaration of the Paris Conference on Stability in Europe, Pact on Stability in Europe (Paris, Mar. 21-22, 1995), BULL. EUR. UNION, Mar. 1995, point 2.2.1. Bárta & Richter, *supra* note 1, at 18, observe that "[i]f NATO accession . . . took place before . . . EU accession, most but by no means all political motivations for full EU membership would vanish."

²² The term "European Communities" is the pre-Maastricht way to refer collectively to the European Coal and Steel Community (ECSC), the European Atomic Energy Community (EURATOM), and the European Economic Community (EEC). Since the effective date of the Treaty on European Union, however, the term "European Community" (EC) has technically replaced the term "European Economic Community" (EEC). See TREATY ESTABLISHING THE EUROPEAN COMMUNITY, Mar. 25, 1957, art. 1 [hereinafter EC TREATY], as amended at Maastricht by the TREATY ON EUROPEAN UNION, Feb. 7, 1992,

"reciprocal rights and obligations, common action and special procedures."²³ The individual treaties between the EC and the CEECs are bilateral.²⁴

Association agreements between the EC and its neighbors in Central and Eastern Europe existed long before the dramatic events of 1989.²⁵ In fact, the EC maintained ongoing trading relationships with numerous members of the Council for Mutual Economic Assistance,²⁶ and even entered into bilateral agreements with some of them during the Cold War.²⁷

1992 O.J. (C 224) 1, 1 C.M.L.R. 573 (1992) [hereinafter TEU]. Since it is the EC (rather than the EU) that concludes treaties per EC TREATY, art. 238, the term "EC" will be used in its technical sense where appropriate in this article. See TEU, art. G(1).

The reader is forewarned, however, that current usage commonly (and confusingly) uses the singular term "European Community" to encompass all three communities (i.e. the ECSC, EURATOM and the former EEC). That confusing usage will be avoided here, insofar as it is possible to do so. In the context of association agreements with CEECs, it is often the case that all three communities are signatories. See, e.g., Partnership and Cooperation Agreement Between the European Communities and their Member States, of the One Part, and Ukraine, of the Other Part (signed June 14, 1994) (on file with author) [hereinafter Ukrainian PCA] (defining the term "European Community," for purposes of the agreement, to include the EC, EURATOM, and the ECSC).

²³ EC TREATY, art. 238. If an association agreement falls within exclusive Community competence, the EC may act on its own; otherwise, the member states must also participate in the conclusion (and ratification) of the agreement. See Opinion 1/94, Opinion Pursuant to Article 228(6) of the EC Treaty, 1994 E.C.R. 5267, 1 C.M.L.R. 205 (1994)(Uruguay Round Treaties).

²⁴ They are between the EC and its member states, on the one hand, and the associated country, on the other (although, as noted *supra* in note 22, some such treaties also involve the ECSC and/or EURATOM, in addition to the EC proper). Article 238 of the EC Treaty contemplates the conclusion of association agreements "with one or more States or international organisations." EC TREATY, art. 238. The procedure for negotiation of an association agreement starts with a mandate from the Council of Ministers to the Commission, instructing it to open negotiations. *Id.* art. 228(1). The Commission then conducts negotiations with the prospective associated country, and initials the draft agreement. *Id.* Final negotiations are conducted within the framework of the Council of Ministers, which ultimately concludes the treaty on behalf of the EC and the member states. *Id.* art. 228(2). The treaty becomes effective once it has been approved by the European Parliament, *id.* art. 238, and ratified by each EU member state and by the associated country (in accordance with the domestic law of each such country). On the role of so-called "interim agreements," see *infra* note 74.

²⁵ For an overview of the post-World War II development of relations between the EC and the CEECs, see Hartnell, *Long and Winding Road*, *supra* note 1, at 179-83, and references cited therein.

²⁶ According to one expert, "very little is known about the beginnings of" the Council for Mutual Economic Assistance (better known as "COMECON" or the "CMEA"). GIUSEPPE SCHIAVONE, THE INSTITUTIONS OF COMECON 14 (1981). The founding members of COMECON (in 1949) were Bulgaria, Czechoslovakia, Hungary, Poland, Romania, and the Soviet Union. Albania joined later that same year, and the German Democratic Republic joined in 1950. *Id.* See generally JENNY BRINE, COMECON: THE RISE AND FALL OF AN INTERNATIONAL SOCIALIST ORGANIZATION (1992); Linda Ervin, *A Selective Bibliography*, in THE INSTITUTIONS OF COMECON, *supra*, at 187-246. COMECON, unlike the EC, never had external competence to sign international agreements and thereby bind its members. Hartnell, *Long and Winding Road*, *supra* note 1, at 180.

²⁷ For example, the EC concluded agreements covering trade in certain agricultural products with Poland in 1965 and, in 1968, with Czechoslovakia, Hungary, and Poland (again). See, e.g., Council Regulation 2045/68, 1968 O.J. (L 303) 43. In addition to these sector-specific agreements, the EC entered into a general trade framework agreement with Yugoslavia in 1970. 1970 O.J. (L 58) 1. The Benelux countries concluded an agreement with Romania in 1969. 1969 O.J. (L 326) 43. See generally Hartnell, *Long and Winding Road*, *supra* note 1, at 180. During the 1970s, the EC tried but failed to reach agreement with the CMEA on a framework for developing trade relations among member countries. *Id.* Since bilateral arrangements were largely beyond reach, this era was characterized by the so-called "autonomous" trade policy. *Id.* at 181. The EC did, however, conclude bilateral agreements covering trade in textiles (1973) and in coal and steel products (1978 and 1979) with

These relationships were being expanded in the 1980s, both before and during the collapse of the COMECON system. Still, the increase in number and types of association agreement since 1989 has been dramatic.

The EU moved in the early 1990s to adapt the association process to the changing needs of the CEECs.²⁸ Indeed, the task of keeping up with the ongoing metamorphoses of its neighbors in transition has been enormously challenging for the EU.²⁹ Part III below analyzes the ways in

Bulgaria, Czechoslovakia, Hungary, Poland and Romania. *Id.* at 182.

²⁸ First, at its April 1990 Dublin Summit, the European Council decided to offer a new type of association agreement to the CEECs. Conclusions of the Presidency (Dublin European Council, Apr. 1990), BULL. EUR. COMMUNITIES, Apr. 1990, points 1.1 - 1.16 [hereinafter 1990 Dublin Summit Conclusions], at point 1.8. Second, the Commission prepared a report pursuant to the European Council's request. See Communication from the Commission to the Council on Association Agreements with the Countries of Central and East Europe: General Framework, COM(90)398 [hereinafter Association Agreements: General Framework]. Third, negotiating directives for the first EAs were issued in December 1990. BULL. EUR. COMMUNITIES, Dec. 1990, point 1.4.6. Fourth, the European Parliament resolved that "whereas, although the [earlier form of association agreements] are a welcome first step towards improving trade relations and economic cooperation, in view of the problems faced by these countries, cooperation over and above these agreements is needed as part of an association that must be seen in the context of the possible accession of these countries to the [EU] . . ." European Parliament Resolution A3-0055/91 of Apr. 18, 1991 on a General Outline for Association Agreements with the Countries of Central and Eastern Europe, 1991 O.J. (C 129) 142. The association process was initially viewed as more or less distinct from the programs initiated by the EU to provide aid and technical assistance to the CEECs, notably PHARE and TACIS, but these initiatives have subsequently become thoroughly intertwined. See discussion, *infra* text accompanying notes 58-59.

²⁹ The relationship between the EU and the CEECs has been addressed at each European Council summit since 1989, notably at: Strasbourg (Dec. 1989); Dublin (Apr. 1990); Rome (Dec. 1990); Luxembourg (June 1991); Maastricht (Dec. 1991); Lisbon (June 1992); Edinburgh (Dec. 1992); Copenhagen (June 1993); Brussels (Oct. 1993); Corfu (June 1994); Essen (Dec. 1994); Cannes (June 1995); Madrid (Dec. 1995); Florence (June 1996); Dublin (Dec. 1996); Amsterdam (June 1997); and Luxembourg (Dec. 1997). Also, a special Paris Summit was held in November 1989 to discuss developments in Eastern Europe. Shiela Rule, *Europeans Press Case For Shaping the Future*, N.Y. TIMES, Nov. 17, 1989, at A14.

The Commission has been active in preparing reports. See Association Agreements: General Framework, *supra* note 28; European Commission Guidelines of 28 April 1993 on the Future of Relations Between the EC and Central and Eastern Europe: Report by the Commission to the [Edinburgh] European Council, reprinted in AGENCE EUR. DOCS., Dec. 9, 1992, reported in BULL. EUR. COMMUNITIES, Apr. 1993, point 1.3.5 [hereinafter Commission Guidelines]; Communication of 18 May 1993 on Towards a Closer Association with the Countries of Central and Eastern Europe, reprinted in AGENCE EUR. DOCS., May 6, 1993, reported in BULL. EUR. COMMUNITIES, May 1993, point 1.3.4 [hereinafter Commission Communication on Closer Association]; Communication of 13 July 1994 on The Europe Agreements and Beyond: A Strategy to Prepare the Countries of Central and Eastern Europe for Accession, COM(94)320 final, reprinted in AGENCE EUR. DOCS., July 21, 1994 [hereinafter Commission Strategy]; Suggestions of 26 July 1994 on the Strategy to Prepare the Countries of Central and Eastern Europe for Accession, COM(94)361 final, reprinted in AGENCE EUR. DOCS., Sept. 14, 1994 [hereinafter Commission Suggestions]; Communication of 14 March 1995 on Industrial Cooperation with the Countries of Central and Eastern Europe, COM(95)71 final, reported in BULL. EUR. UNION, Mar. 1995, point 1.4.51 (proposing measures to improve the framework conditions for industrial development, step up industrial restructuring and modernization, and promote investment); White Paper on the Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union, COM(95)163 final and COM(95) 163 final/2 (addendum), reported in BULL. EUR. UNION, May 1995, point 1.4.63 [hereinafter CEEC White Paper]; Follow-up to the White Paper on the Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union; Technical Assistance, reported in BULL. EUR. UNION, July-Aug. 1995, point 1.4.63 [hereinafter White Paper Follow-Up]; Progress Report of 29 November 1995 on Pre-

which the EU has met (and failed to meet) this challenge. Before undertaking a critique of the association process, however, some background information is required. This article will not recount the entire historical development of the current forms of association agreement, or provide a detailed analysis of the contents of each type of framework association agreement.³⁰ Rather, it will establish a taxonomy of association agreements, summarize the key features of the association regime, and

accession Strategy with the Associated Countries of Central and Eastern Europe, *reported in* BULL. EUR. UNION, Nov. 1995, point 1.4.46 [hereinafter Pre-accession Progress Report]; Interim Report of 29 November 1995 from the Commission to the [Madrid] European Council on the Effects of the Policies of the EU of Enlargement to the Associated Countries of Central and Eastern Europe, *reported in* BULL. EUR. UNION, Nov. 1995, point 1.4.47 [hereinafter Enlargement Interim Report]; Study Into Ways of Developing Agricultural Relations of the European Union and the Associated Countries with a View to Their Accession, *reported in* BULL. EUR. UNION, Nov. 1995, point 1.4.48 [hereinafter CEEC Agricultural Study]; State of Progress in Preparing for EU Enlargement: Commission Information Memo, *reprinted in* AGENCE EUR. DOCS., Aug. 9, 1996; Agenda 2000; For a Stronger and Wider Europe, COM (97)2000 final/1 and The Challenge of Enlargement, COM (97)2000 final/2, *also available at* <<http://europa.eu.int/comm/agenda2000/overview/eu/agenda.htm>> (both presented by the Commission on July 15, 1997) [hereinafter Agenda 2000]. *See also* Opinion by Agriculture Commissioner Steichen on The Common Agricultural Policy: The Medium-Term Outlook in the Context of Future Trends in International Trade in Agriculture, *reprinted in* AGENCE EUR. DOCS., Dec. 7, 1994.

Based on the Commission Strategy and the Commission Suggestions, *supra*, the General Affairs Council submitted a Strategy to Prepare for the Accession of the Associated Countries of Central and Eastern Europe to the [Essen] European Council, *reprinted in* AGENCE EUR. DOCS. Dec. 14, 1994 [hereinafter Pre-accession Strategy]. The Essen Summit approved the Pre-accession Strategy. Conclusions of the Presidency (Essen European Council, Dec. 1994), *reprinted in* BULL. EUR. COMMUNITIES, Dec. 1994, points I.1-.55 [hereinafter Essen Summit Conclusions], at points I.13, I.39-.54. The CEEC White Paper, *supra*, was approved by the European Council at its Cannes Summit in June 1995. Conclusions of the Presidency (Cannes European Council, June 1995), *reprinted in* BULL. EUR. UNION, June 1995, points I.1-.56 [hereinafter Cannes Summit Conclusions].

The European Parliament, too, has participated in the debate surrounding enlargement. *See, e.g.*, EP Resolution on Institutional Problems, the Council's Institutional Role, and the Cooperation Procedure, AGENCE EUR. DOCS., Jan. 30, 1993; EP Resolution of 27 May 1993 on the Conclusions of the Edinburgh European Council Concerning Relations with Central and Eastern Europe, 1993 O.J. (C 176) 168; 1995 O.J. (C 323) 41, 41-44 (EP assent, subject to amendments, to new TACIS programme; EP asked to be consulted prior to Council adoption of measures against a partner state in cases of violation of democratic principles, human rights or minority rights); EP Resolution on Commission Communication on Industrial Cooperation, 1996 O.J. (C 166) 262; EP Resolution on Commission Study on Alternative Strategies for the Development of Relations in the Field of Agriculture, *reported in* BULL. EUR. UNION, Dec. 1996, point 1.4.50.

See also Opinion of the Economic and Social Committee on the Future Enlargement of the Community [hereinafter ECOSOC Opinion on Enlargement], CES(92) 1039, *reported in* BULL. EUR. COMMUNITIES, Sept. 1992, point 1.3.1 (noting that enlargement of the Community should not be achieved at the expense of its consolidation); ECOSOC Opinion of Sept. 25, 1996 on the CEEC White Paper, 1997 O.J. (C 30) 59; ECOSOC Opinion on the Implications for the CAP of the Accession of Countries of Central and Eastern Europe, *reported in* BULL. EUR. UNION, Dec. 1996, point 1.4.51; Committee of the Regions Opinion on the CAP and Eastward Enlargement, *reported in* BULL. EUR. UNION, Jan.-Feb. 1997, point 1.3.69.

³⁰ For an historical overview of the evolution of the so-called "First Generation" and "Second Generation" agreements, *see* Hartnell, *Long and Winding Road*, *supra* note 1, at 182-83. Further analysis of the principal types of agreement can be found therein at 184-97, and in Hartnell, *Association Agreements*, *supra* note 1, at 226-29. *See also* Marc Maresceau, *On Association, Partnership, Pre-Accession and Accession*, in *ENLARGING THE EUROPEAN UNION: RELATIONS BETWEEN THE EU AND CENTRAL AND EASTERN EUROPE* (Marc Maresceau ed., 1997).

detail the current status of each CEEC.

The EU's association strategy has become highly differentiated: It draws a distinction between those countries which have concluded a "pre-accession"³¹ Europe Agreement (EA)³² with the European Communities and those which have concluded (or are expected to conclude) a "mere" Partnership and Cooperation Agreement (PCA).³³ The differences between

³¹ "Accession" is the technical term for joining the EU. See TEU, art. O. Any "European State" may apply for membership. *Id.* As for the meaning of "European" see Commission Report on Europe and the Challenge of Enlargement, BULL. EUR. COMMUNITIES SUPP. 3/1992 at 11 [hereinafter Commission Enlargement Report] ("European identity" cannot be condensed into a single formula, but refers to the "shared experience of proximity, ideas, values, and historical interaction" and is comprised of geographical, historical, and cultural elements).

At its Maastricht Summit, the European Council clarified that applications would be accepted from "any European State whose systems of government are founded on the principle of democracy." Conclusions of the Presidency (Maastricht European Council, Dec. 1991), *reprinted in* BULL. EUR. COMMUNITIES, Dec. 1991, points I.1-19 [hereinafter Maastricht Summit Conclusions], at point I.4. The Commission Enlargement Report, *supra*, elaborated three threshold criteria to determine an applicant's eligibility: European identity, democratic status, and respect for human rights. Further criteria pertain to the applicant's "acceptance of the Community system, and its capacity to implement it." *Id.* At its Copenhagen Summit, the European Council elaborated the following accession criteria: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for the protection of minorities; a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union; and the applicant's ability to take on the obligations of membership, i.e. the *acquis communautaire*, and adhere to the aims of political, economic and monetary union. Conclusions of the Presidency (Copenhagen European Council, June 1993), *reprinted in* BULL. EUR. COMMUNITIES, June 1993, points I.1-41 [hereinafter Copenhagen Summit Conclusions], at point I.26.

The Treaty of Amsterdam concluded in June 1997 will, when effective, modify the provisions of the TEU pertaining to accession. Amended Article O will read: "Any European State which respects the principles set out in Article F(1) may apply to become a member of the Union." Amended Article F(1) will read: "The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common[to] the Member States." TREATY OF AMSTERDAM, *concluded by the Intergovernmental Conference in June 1997*, <<http://europa.eu.int/abc/obj/amst/en/index.html>> [hereinafter TREATY OF AMSTERDAM].

³² EAs used to be called "Second Generation" agreements. The first tier of Central and East European countries includes Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia. Within this group of ten EA countries, there exist two mutually-exclusive geographical sub-groupings: the Visegrád Group (consisting of the Czech Republic, Hungary, Poland, and Slovakia), and the Baltic States (consisting of Estonia, Latvia and Lithuania). For a discussion of the Visegrád Group, see *infra* text accompanying notes 127-30. Bulgaria, Romania and Slovenia are not usually considered to be members of the Visegrád Group, but these countries consider themselves to be Central European and thus tend to align with the Visegrád Group. See, e.g., AGENCE EUR., July 18-19, 1994, at 10 (Slovene Finance Minister Gaspari said that Slovenia wished "to be treated on an equal footing with the Visegrád countries" and "insisted on the importance of considering Slovenia not as a Mediterranean state . . . , but as a Central European country."). See *infra* discussion of CEFTA and CEI in Parts IV.C.1 and IV.D.3. The EAs "are the main base for helping CEECs accomplish the macro-economic restructuring and adjustments that are indispensable for accession to the EU." AGENCE EUR., July 18-19, 1994, at 9.

³³ PCAs used to be called "First Generation" agreements. See Hartnell, *Long and Winding Road*, *supra* note 1, at 182-83. Today there are two major sub-types of PCA, described more fully *infra* at note 73. A *de jure* hierarchy exists among the PCA countries, corresponding to the more or less comprehensive nature of the association agreement offered to them by the EC.

The second tier of Central and East European countries includes Albania, the remaining members of the former Yugoslavia (i.e. Bosnia-Herzegovina, Croatia, Macedonia, and the Federal Republic of Yugoslavia, consisting of Serbia and Montenegro), and all members of the CIS (i.e. Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan,

the archetypal EA and PCA framework agreements are many, and their significance tends to reflect the goal of eventual accession *vel non*. And yet, these differences also have implications that reach beyond their particular European context.

Economically, the key distinction between the PCAs and the EAs is that the former merely normalize trade, whereas the latter are preferential. The PCAs normalize trade by granting most-favored-nation (MFN) treatment,³⁴ whereas the EAs grant preferential access (i.e. apply even lower tariffs than are applied to goods coming from countries entitled to MFN treatment).³⁵ In technical terms, the difference is that the EAs purport to be free trade agreements within the meaning of Article XXIV of the General Agreement on Tariffs and Trade,³⁶ whereas the PCAs do not.³⁷ The EAs provide for the gradual implementation of free trade in industrial goods; such products originating in the territory of an EA country have preferential access to the EC market and *vice versa*.³⁸ The EAs are thus bilateral trade regimes that are meant to be exceptions to the most-favored-nation obligation imposed on WTO countries. However, both PCAs and EAs provide for a variety of protective trade measures, the impact of which is likely "to be significant in the medium term notwithstanding integrationist enthusiasm."³⁹

Both the EAs and the PCAs call for political dialogue⁴⁰ and create

Ukraine, and Uzbekistan). Among the CIS countries, there exist two mutually-exclusive geographical subgroups: Central Asia (consisting of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan), and the Transcaucasus (consisting of Armenia, Azerbaijan and Georgia).

³⁴ On occasion, however, the EC has entered into a PCA with a country to which it had previously granted preferential treatment in accordance with the rules governing the generalized system of preferences. In such cases, the arrangement set down in the PCA may in fact be a preferential one, but it is not the PCA that is the agent of preference. Further, some PCAs concluded by the EC (e.g. with Russia) permit the associated country to "apply preferential treatment to the other independent States of the former Soviet Union," notwithstanding that the PCAs are based on the "most-favored-nation" principle. See BULL. EUR. UNION, July-Aug. 1995, point 1.4.89.

³⁵ See generally Hartnell, *Long and Winding Road*, *supra* note 1, at 187-92 (describing in detail the movement of goods aspects of the EAs).

³⁶ All EU and EA countries are members of the World Trade Organization, and thus obliged to abide by the rules of the General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194. These issues are discussed in Part V below.

³⁷ Some PCAs, however, contain a clause calling for subsequent negotiations with an eye to establishing a free trade area. See the discussion *infra* in text accompanying note 70.

³⁸ The EAs do not provide for free trade in sensitive goods (e.g. agriculture, coal and steel, textiles), although they do include protocols covering some aspects of such trade.

³⁹ Maresceau & Montaguti, *supra* note 1, at 1343. These authors provide an excellent, comprehensive analysis of the trade-related provisions of the EAs and PCAs. *Id.* at 1343-67. See the discussion of antidumping at 1345-52, safeguards and other import trade barriers at 1352-56, the infant industry clause at 1356-58, and consultation and dispute settlement procedures at 1358-62. See also Hartnell, *Association Agreements*, *supra* note 1, at 229.

⁴⁰ The EAs "establish and institutionalize regular meetings at the highest level to discuss matters of common interest, with the particular aim of bringing the parties' positions on foreign policy closer together." BULL. EUR. COMMUNITIES, Dec. 1991, point 1.3.2.

a weak institutional structure.⁴¹ These superficial similarities, however, cannot mask the key political distinction between EAs and PCAs: The former are designed to lay the foundation for full political and economic integration into the EU, while the latter are not. The differences reach far beyond mere language.⁴² As between EA and PCA countries in Central and Eastern Europe,⁴³ only the EA countries are invited to participate in the multilateral Structured Dialogue, established by the EU at the Copenhagen

⁴¹ For a description of the institutional framework of association, see Hartnell, *Long and Winding Road*, *supra* note 1, at 185-87. The institutional structures of EAs and PCAs are similar, but not identical. The EAs provide for the creation of the following bilateral institutions: an Association Council, an Association Committee, and an Association Parliamentary Committee. First, the Association Council meets at ministerial level, albeit infrequently; it is responsible for the implementation of the agreement, and for considering any issues of mutual interest. See, e.g., BULL. EUR. UNION, July-Aug. 1995, point 1.4.66 (second meeting of EU-Hungary Association Council) and point 1.4.67 (second meeting of EU-Poland Association Council); BULL. EUR. UNION, Jan.-Feb. 1996, point 1.4.82 (second meeting of EU-Bulgaria Association Council), point 1.4.85 (second meeting of EU-Czech Republic Association Council), point 1.4.87 (second meeting of EU-Romania Association Council), and point 1.4.89 (second meeting of EU-Slovakia Association Council). Second, the Association Committee carries out day-to-day business and exercises any powers delegated to it by the Association Council. Third, the Association Parliamentary Committee, composed of the members of the European Parliament and the respective EA country's parliament, has the power to request and receive information, and to make recommendations to the Association Council. The EA dispute settlement procedures (calling for arbitration) were invoked for the first time by the EU against the Czech compulsory import deposit system. AGENCE EUR., July 25, 1997, at 9.

The PCAs call for the establishment of a Joint Committee, rather than an Association Council and an Association Committee. They also provide for interparliamentary cooperation.

A new bilateral institution, not called for by the EAs, appeared in mid-1997. The Joint Advisory Group, composed of representatives of the EU's Economic and Social Committee and the EA country, will discuss economic and social aspects of bilateral relations. The first Joint Advisory Group was set up with Hungary, but others are planned with each EA country. *First Joint Advisory Group Set Up*, in EUR. DIALOGUE: THE MAGAZINE FOR EUROPEAN INTEGRATION (July/Aug. 1997) <http://europa.eu.int/en/comm/dg10/incom/eur_dial/index.html> [hereinafter EUR. DIALOGUE]. EUR. DIALOGUE is the EU's new online magazine aimed at CEEC "decision makers and policy-formers." *Id.*

The EA countries themselves have developed new institutions to manage their relations with the EU and their obligations under their association agreements. See, e.g., Hartnell, *Long and Winding Road*, *supra* note 1, at 187 (describing Hungarian developments, including the inter-ministerial committee for the coordination of tasks connected with European integration); OMRI, *supra* note 13, Feb. 23, 1996 (meeting of Hungarian-EU Integration Committee; reference to Poland's Ministry for EU Affairs); HUNG. REP., No. 2.25, Dec. 9, 1996 <<http://www.isys.hu/hrep/>> (a study by the Hungarian State Audit Office showed a total of 1,000 people from various Hungarian state institutions working on EU integration matters); RFE/RL NEWSLINE (May 12, 1997) <<http://www.rferl.org>> (Polish Premier Cimoszewicz appointed 68-member EU integration advisory council).

⁴² This is not to suggest that language is unimportant. For example, the preamble of the Europe Agreement Establishing an Association Between the European Communities and their Member States, of the One Part, and the Republic of Hungary, of the Other Part, 1993 O.J. (L 347) 17 [hereinafter Hungarian EA] provides: "Considering Hungary's firm intention to seek full integration in the political, economic and security order of a new Europe; Having in mind that the final objective of Hungary is to become a member of the Community and that this association, in the view of the Parties, will help to achieve this objective." *Id.* Preamble. Similar language was included in the early EAs with Czechoslovakia and Poland. The first group of EA countries protested vigorously against this one-sided language and eventually managed to extract from the EU less non-committal language. See discussion *infra* accompanying notes 177-78.

⁴³ However, the EU extended these programs to other countries in line for accession, i.e. Cyprus and Malta. See *infra* notes 193-94.

Summit in June 1993, as a way to include them on a regular basis in some aspects of European summitry;⁴⁴ included in the Pre-accession Strategy, approved by the European Council at the Essen Summit in December 1994;⁴⁵ and covered by the CEEC White Paper, designed to prepare them for integration into the single market.⁴⁶

The key to the "pre-accession" nature of the EAs, as indicated both in the text of the treaties and in pertinent EU policy papers,⁴⁷ is the obligation to approximate⁴⁸ the legislation of the associated country to that of the EU.⁴⁹ The Hungarian EA, for example, states that:

The Contracting Parties recognize that *the major precondition* for Hungary's economic integration into the Community is the approximation of that country's existing and future legislation to that of the Community. Hungary shall act to ensure that future legislation is compatible with

⁴⁴ See Copenhagen Summit Conclusions, *supra* note 31. See *infra* text accompanying notes 257-63.

⁴⁵ See Pre-accession Strategy, *supra* note 29. See also Commission Strategy and Commission Suggestions, *supra* note 29; Pre-Accession Progress Report, *supra* note 29, at point 1.4.46 (outlining the general political and economic situation in each EA country and assessing progress made under the Pre-accession Strategy).

⁴⁶ See CEEC White Paper, *supra* note 29. See also White Paper Follow-Up, *supra* note 29.

⁴⁷ See Essen Summit Conclusions, *supra* note 29; CEEC White Paper, *supra* note 29. See also Statement of Commissioner Brittan, IP(92) 451 (June 1, 1992), *quoted in* Hartnell, *Long and Winding Road*, *supra* note 1, at 225 n.99 ("new members must take on not only the full *acquis communautaire*, but the *finalité politique* of the Community. The EC, in other words, must be taken not only for what it is, but for what it is determined to become.").

⁴⁸ "Approximation" is a term derived from Article 100 of the Treaty of Rome. EC TREATY, art. 100. The term "harmonization" is a more common, generic term for the process of bringing legal systems into alignment, both substantively and procedurally.

⁴⁹ Article 68 of the Hungarian EA illustrates the broad range of areas in which approximation is expected to occur:

The approximation of laws shall extend to the following areas in particular: customs law, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, financial services, rules on competition, protection of health and life of humans, animals and plants, food legislation, consumer protection including product liability, indirect taxation, technical rules and standards, transport and the environment.

Hungarian EA, *supra* note 42, art. 68. The EA between the EC and Poland contains identical language in Article 69. Europe Agreement Establishing an Association Between the European Communities and Their Member States, of the One Part, and the Republic of Poland, of the Other Part, 1993 O.J. (L 348) 2 [hereinafter Polish EA]. See generally Richard M. Buxbaum, *Modernization, Codification, and Harmonization: The Influence of the Economic Law of the European Union on Law Reform in the Former Socialist Bloc* in EUROPEAN ECONOMIC AND BUSINESS LAW: LEGAL AND ECONOMIC ANALYSIS OF INTEGRATION AND HARMONIZATION 125-35 (Buxbaum et al. eds., 1996). See generally Andrew Evans, *Voluntary Harmonization in Integration Between the European Community and Eastern Europe*, 22 EUR. L. REV. 201 (1997); Miklós Király, *Is Hungary Prepared for Accession to the European Community?*, ANNALES OF ELTE UNIVERSITY, BUDAPEST 53 (1994); Miklós Király, *Some Characteristics of the Approximation of Laws in Hungary*, in THE EUROPEAN UNION AT THE DAWN OF A NEW CENTURY 225-38 (Juridicia ed., 1997).

Community legislation as far as possible.⁵⁰

The pre-accession EAs thus require the EA countries to recreate themselves in the EU's image.⁵¹ PCA countries, in contrast, are not required to undertake such concrete obligations in exchange for the market access and aid that are part and parcel of association.⁵²

EAs have a much broader substantive scope than PCAs. For example, EAs contain detailed provisions on matters such as the movement of workers, establishment, and trade in services; however, they do not go so far as to create free movement in any of these areas.⁵³ EAs also impose

⁵⁰ Hungarian EA, *supra* note 42, art. 67 (emphasis added). The Polish EA contains slightly milder language; it provides that "Poland shall use its *best efforts* to ensure that future legislation is compatible with Community legislation." Polish EA, *supra* note 49, art. 68 (emphasis added). The presence of this weaker language in the Polish EA does not in any way detract from the fact that approximation is seen as a precondition to eventual Polish accession.

⁵¹ For an analysis of the "classical method" by which the EU has concluded past enlargement rounds, see Christopher Preston, *Obstacles to EU Enlargement: The Classical Community Method and the Prospects for a Wider Europe*, 33 J. COMMON MKT. STUD. 451 (1995). Preston argues that the "recently concluded EFTA enlargement is likely to be the last 'classical' enlargement, and that in future a more radical approach, questioning some basic assumptions about the EU's guiding principles will have to be developed if the goal of a genuinely pan-European Union is to be realized." *Id.* at 452. One of the principles he would call into question is that "formal accession negotiations focus solely on the practicalities of the applicants taking on the *acquis*." *Id.* at 453. In his view, in the case of the EA countries "the practicalities of taking on the *acquis* would quickly deadlock negotiations" and thus a "more searching debate would therefore be needed before negotiations could be started." *Id.* at 454.

For examples of the types of problem Preston foresees, see *Interview with Marian Brzóška*, WARSAW BUS. J., Sept. 30-Oct. 6, 1996, at 12 (for the agricultural sector to "adjust well to the EU we must change several hundred agricultural laws. Now, Parliament is only able to process five a year because it keeps mulling over abortion and the Concordat [with the Vatican]. They talk about everything but the economy."); *Agriculture Meeting*, in TOGETHER IN EUR., No. 106, Apr. 1, 1997 (during a March 1997 meeting with their EU counterparts, CEEC agriculture ministers pointed to their "progress in adapting their legislation as well as their monitoring and inspection infrastructure to the requirements of the internal veterinary and plant-protection market"; noted their "financial and technical" problems . . . in applying certain EU requirements"; and "emphasised that these additional responsibilities imply that the improvement of current infrastructures will require financial investment.").

⁵² However, some PCAs do contain hortatory provisions on approximation. For example, the Ukrainian PCA provides that: "[t]he parties recognize that an important *condition for strengthening the economic links* between Ukraine and the Community is the approximation of Ukraine's existing and future legislation to that of the Community. Ukraine *shall endeavour to ensure* that its legislation will gradually be made compatible with that of the Community." Ukrainian PCA, *supra* note 22, art. 43(1) (emphasis added). The Ukrainian PCA goes on to provide for approximation of laws in all areas mentioned by article 68 of the Hungarian EA, *supra* note 42, and by article 69 of the Polish EA, *supra* note 49, and adds the areas of public procurement and nuclear laws and regulations. Ukrainian PCA, *supra* note 22, art. 43(2).

With regard to Russia see Strategy on EU-Russia Relations, reported in BULL. EUR. UNION, Nov. 1995, point 2.2.1, reprinted in AGENCE EUR. DOCS., May 16, 1996 (noting, in the context of economic cooperation, that "[s]tudies should be done to identify obstacles to wider flows of trade and investment" and to clarify "the impact on our respective economies and the required approximation of legislation, both with a view to Russian WTO membership and taking into account the relevant provisions of the PCA on the possible establishment of a free trade area between the EU and Russia.").

⁵³ Compare Title IV of the Hungarian EA, *supra* note 42, and of the Polish EA, *supra* note 49 (Movement of Workers, Establishment, Supply of Services) with Title IV of the Ukrainian PCA, *supra* note 22 (Provisions Affecting Business and Investment). The EAs call for a meeting of the Association

significant obligations on the EA countries in terms of competition law.⁵⁴ In some cases, the EAs serve as a framework for further negotiations between the EU and the EA countries.⁵⁵ PCAs, on the other hand, are limited mainly to trade in goods, although they do contain a variety of provisions that mirror those found in EAs and, for that matter, in the EC Treaty itself.⁵⁶

Finally, the EU provides considerable financial, technical and other

Council during the fourth year of association in order to review *inter alia* these provisions and to consider "... any possible changes to be brought about as regards measures concerning the implementation of the dispositions governing the second [five-year] stage." Hungarian EA, *supra* note 42, art. 6(3). See generally Hartnell, *Long and Winding Road*, *supra* note 1, at 192-94 (analyzing EA provisions on movement of workers, establishment, and supply of services). Notwithstanding the lack of liberalization in these fields, CEECs have endeavored to forge ahead. For example, Poland has ratified the European Social Charter. RFE/RL NEWSLINE, *supra* note 41, June 17, 1997.

For interesting perspectives on these issues, compare *Burgenland Premier Fears Hungary's EU Accession*, HUNG. REP., *supra* note 41 (Austrian fear of "economic disaster as Hungarian companies and workers would flood Burgenland") with Barta & Richter, *supra* note 1, at 11-12 (considering potential benefits of migration of workers from the CEECs to the EU). See also *infra* note 136.

⁵⁴ The Hungarian EA, for example, provides that:

1. The following are incompatible with the proper functioning of the Agreement, insofar as they may affect trade between the Community and Hungary:
 - (i) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;
 - (ii) abuse by one or more undertakings of a dominant position in the territories of the Community or of Hungary as a whole or in a substantial part thereof;
 - (iii) any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods.
2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 85, 86 and 92 of the [EC Treaty].

Hungarian EA, *supra* note 42, art. 62. Article 63 of the Polish EA is substantially identical. Polish EA, *supra* note 49, art. 63. Both EAs also require the adoption of rules (within three years of entry into force of the association agreement) to implement these substantive obligations. *Id.* See, e.g., Implementing Rules for the Application of the Competition Provisions Applicable to Undertakings provided for in art. 62, para. 1 (i) and (ii), and para. 2 of the Europe Agreement between the EC and Hungary (on file with the author).

See generally Hartnell, *Long and Winding Road*, *supra* note 1, at 195. See also Otto Heinz, *Rules on State Aids with Hungary in the Europe Agreement*, 2 EUR. COMPETITION L. REV. 116 (1995); Tamás Kende, *State Aid under the EC Hungary Association Agreement*, 35 ACTA JURIDICA HUNGARICA 333 (1993).

⁵⁵ For example, the EU has been working towards concluding agreements on air travel with all EA countries. See BULL. EUR. UNION, Mar. 1995, point 1.4.52 (Commission proposal); BULL. EUR. UNION, Nov. 1996, point 1.4.70 (negotiating directives adopted on Nov. 11, 1996).

⁵⁶ For example, the Ukrainian PCA, *supra* note 22, contains clauses addressed to establishment (arts. 23-30); to cross-border supply of services (arts. 31-33^{bis}); to competition law (art. 41^{bis}(1)); to the protection of intellectual property rights (art. 42); and to current payments and movement of capital (art. 41).

aid ("cooperation") as a part of its association strategy.⁵⁷ This cooperation is an important feature of both EAs and PCAs. Most of the EC's financial aid is channeled through the PHARE⁵⁸ and TACIS programs. A

⁵⁷ Within the EAs and PCAs, the term "cooperation" refers to the many areas in which the EU will endeavor to assist the associated countries. See, e.g., the provisions on economic cooperation (Hungarian EA, *supra* note 42, Title VI, at 17-25; Polish EA, *supra* note 49, Title VI, at 18-24; Ukrainian PCA, *supra* note 22, Title VII); on cultural cooperation (Hungarian EA, *supra* note 42, Title VII, at 25-28; Polish EA, *supra* note 49, Title VII, at 25-28; Ukrainian PCA, *supra* note 22, Title VIII); and on financial cooperation (Hungarian EA, *supra* note 42, Title VIII; Polish EA, *supra* note 49, Title VIII; Ukrainian PCA, *supra* note 22, Title IX). The agreements also contain provisions on the approximation of laws, which provide that the EC shall provide "technical assistance for the implementation of [such] measures which may include inter alia: the exchange of experts; the provision of information; organization of seminars; training activities; aid for the translation of Community legislation in the relevant sectors." See Hungarian EA, *supra* note 42, art. 69, at 17; Polish EA, *supra* note 49, art. 70, at 17-18; see also Ukrainian PCA, *supra* note 22, art. 43(3) (contains a similar undertaking by the EC).

For an overview of some forms of cooperation, see Written Question 3405/92, 1993 O.J. (C 106) 44 (concerning cultural, educational and scientific cooperation). With regard to cultural cooperation, see BULL. EUR. UNION, Jan.-Feb. 1995, point 1.4.78 (joint meeting of the culture and communications ministers of the EU Member States and the associated countries of Central and Eastern Europe); Council Resolution of 3 April 1995 Concerning Cooperation with the Associated Countries of Central and Eastern Europe in the Cultural Domain, 1995 O.J. (C 247) 2; Opinion of the Committee of the Regions on the Role of Local and Regional Authorities in Education and Training Provided by the EU in the Countries of Central and Eastern Europe, reported in BULL. EUR. UNION, Sept. 1995, point 1.4.32; *EU/East Europe: Education Ministers Hold CEEC Pupils at Bay*, EURO-EAST: EUR. INFO. SERVICE, Dec. 10, 1996, available in LEXIS, News Library, Eureau File [hereinafter EIS EURO-EAST REP.] (discussing controversy over whether CEECs can get involved in "management" of EU educational programs). With regard to scientific cooperation, see Council Decision Adopting a Specific Programme for Research, Technological Development, including Demonstration, in the Field of Cooperation with Third Countries and International Organizations (1994-98), 1994 O.J. (L 334) 109; Joint Ministerial Meeting of Research Ministers, BULL. EUR. UNION, June 1995, point 1.4.60. With regard to cooperation in justice and home affairs, see Berlin Ministerial Conference on Cooperation in the Fight Against Drug-related and Organized Crime, reported in BULL. EUR. COMMUNITIES, Sept. 1994, point 1.4.1; Joint Ministerial Meeting of Justice and Home Affairs Ministers, reported in BULL. EUR. COMMUNITIES, June 1995, point 1.4.61. With regard to industrial cooperation, see Council Conclusions of 7 April 1995 on Industrial Cooperation with the Central and East European Countries, reported in BULL. EUR. UNION, Apr. 1995, point 1.4.62 (reiterating "the importance of dialogue on industrial cooperation with these countries in order to foster their integration into the European economy and to promote the harmonious development of trade").

⁵⁸ PHARE -- which stands for "Poland and Hungary Aid for Restructuring of the Economy -- was established by Council Regulation 3906/89 of 18 December 1989 on Economic Aid to the Republic of Hungary and the Polish People's Republic, 1989 O.J. (L 375) 11. It was first extended by Council Regulation 2698/90 of 17 September 1990 Amending Regulation 3906/89 in Order to Extend Economic Aid to Other Countries of Central and Eastern Europe, 1990 O.J. (L 257) 1, and has been annually extended (and occasionally expanded to include more countries) thereafter. PHARE was extended to the former German Democratic Republic in 1990, but this country dropped out after German reunification in 1991. PHARE was also extended to Yugoslavia, but assistance to some of the former republics was suspended because of conflict. PHARE currently covers Albania, Bosnia-Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Slovakia, and Slovenia. See generally Commission's General Guidelines for Assistance under the PHARE Programme for 1991 and 1992, BULL. EUR. COMMUNITIES, July-Aug. 1992, point 1.4.9; Commission's General Guidelines for Assistance under the PHARE Programme for 1993 to 1997, BULL. EUR. COMMUNITIES, July-Aug. 1993, point 1.3.6. The latest guidelines are reported in BULL. EUR. UNION, Mar. 1997, point 1.4.53.

See also Second Annual Report from the Commission to the Council and the European Parliament on the Implementation of Community Assistance to the Countries of East and Central Europe (PHARE)

in 1991, COM(93)172 final, *reported in* BULL. EUR. COMMUNITIES, May 1993, point 1.3.7; Third and Fourth Annual Reports from the Commission to the Council and the European Parliament on the Implementation of Community Assistance to the Countries of East and Central Europe (PHARE) in 1992 and 1993, COM(95)13 final, *reported in* BULL. EUR. UNION, Jan.-Feb. 1995, point 1.4.82; Fifth Annual Report from the Commission to the Council and the European Parliament on the Implementation of Community Assistance to the Countries of East and Central Europe (PHARE) in 1994, COM(95)366, *reported in* BULL. EUR. UNION, July-Aug. 1995, point 1.4.65 [hereinafter Fifth Annual PHARE Report]. *See also* AGENCE EUR. DOCS., July 16, 1997, at 8-9 (noting Court of Auditors special report on the functioning of the decentralized system for implementation and management of PHARE for the period of 1990-95).

PHARE provided ECU 4.2 billion during the period 1990-1994, and has allocated ECU 6.7 billion for the period 1995-1999. *New Orientations for PHARE Programme*, in *TOGETHER IN EUR.*, No. 106, Apr. 1, 1997 [hereinafter *New PHARE Orientations*].

⁵⁹ TACIS -- which stands for Technical Assistance to the Commonwealth of Independent States -- was established by Council Regulation 2157/91 Concerning the Provision of Technical Assistance for Economic Reform and Recovery in the Independent States of the Former Soviet Union and Mongolia, 1991 O.J. (L 201) 1. Like PHARE, it has been regularly extended. *See, e.g.*, Council Regulation 2053/93, 1993 O.J. (L 187) 1. TACIS currently applies to Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan, as well as to Mongolia. *See generally* Annual Report from the Commission on the Implementation of Cooperation under the TACIS Programme (1991 and 1992), COM(93)362 final, *reported in* BULL. EUR. COMMUNITIES, July-Aug. 1993, point 1.3.16; Commission Decision on Indicative Programmes for 1993 to 1995 for Technical Assistance to the New Independent States of the Former Soviet Union (TACIS), *reported in* BULL. EUR. COMMUNITIES, Oct. 1993, point 1.3.17; Second Report from the Commission on the Implementation of the Programme of Technical Assistance for the Independent States of the Former Soviet Union and for Mongolia (TACIS) (1993), COM(95)57 final, *reported in* BULL. EUR. UNION, Mar. 1995, point 1.4.77; Third Report from the Commission on the Implementation of the Programme of Technical Assistance for the Independent States of the Former Soviet Union and for Mongolia (TACIS) (1994), COM(95)349 final, *reported in* BULL. EUR. UNION, July-Aug. 1995, point 1.4.91.

TACIS aid committed during the program's first four years (i.e. 1991-94) amounted to ECU 1.757 million. BULL. EUR. UNION, July-Aug. 1995, point 1.4.91.

⁶⁰ *See* Hungarian EA, *supra* note 42, art. 99; Polish EA, *supra* note 49, art. 97; Ukrainian PCA, *supra* note 22, art. 74. However, other sources of funding have also been made available. The Assembly of the Regions (ARE) has established the "Centurio" program to train officials in the CEECs. AGENCE EUR., Feb. 24, 1996, at 5. EC funding also reaches CEECs through various other channels, including: humanitarian aid; the European Training Foundation; the European Bank for Reconstruction and Development; special programs dealing with education (Socrates), vocational training (Leonardo da Vinci), the audiovisual industry (Media), the environment (LIFE), and energy (Thermie, Alterner, SAVE, and the European Energy Charter); cultural initiatives; and a variety of special programs targeted at reconstruction in former Yugoslavia. *See* Additional Protocols to the EAs Concerning the Opening of Community Programmes to the Associated Countries of Central and Eastern Europe, *reported in* BULL. EUR. UNION, Apr. 1995, point 1.4.68 (giving the EA countries access to Community programmes in a wide variety of fields, in order to ease their integration into the EU); *CEECs Participation in EU's Educational Programmes*, in *TOGETHER IN EUR.*, No. 196, Apr. 1, 1997 (indicating that only the Czech Republic, Hungary and Romania are prepared to participate in certain educational programs). *See also* Marta Vrbetić, *European Union and its Neighbors in the East and the South: 1995 Budget Lines for Non-member Countries of Central and Eastern Europe and Mediterranean*, EUROSCOPE REP. 11-15 (Dec. 1995).

In addition, some EU Member States provide direct aid to associated countries. For example, Denmark allocated 35 million Danish kroner (\$6 million) to Poland and the Baltic States to help finance their efforts to join the EU. OMRI, *supra* note 13, Feb. 7, 1996. Denmark has also agreed to provide technical and expert assistance on "how to amend legislation and bring it into line with EU requirements" (e.g. to Estonia). OMRI, *supra* note 13, Feb. 29, 1996. *See also* Commission Decision of 5 June 1996, Concerning Aid that the Republic of Austria Intends to Grant Pursuant to the Eastern Programme, 1997 O.J. (L 96) 23.

Last but not least, the associated countries themselves have incurred substantial costs. *See, e.g.*,

significant share of funds allocated to the EAs go to activities that relate, directly or indirectly, to the adaption of legislation to the *acquis communautaire*.⁶¹ Funds provided to EA countries are increasingly tied to the pre-accession process.⁶²

HUNG. REP., *supra* note 41 (Hungarian State Audit Office study showed that 10.5 billion forints were spent on preparations for EU membership in the period 1993-1996, and estimated that the costs would amount to 6.4 billion forints in 1997).

⁶¹ The CEEC White Paper, *supra* note 29, proposed to increase and adapt the assistance provided (through PHARE) for the approximation of laws. The Commission proposed "the establishment by each country of a national framework programme for harmonizing national legislation with internal market legislation, so that all the PHARE programmes aimed at the objectives of the White Paper are complementary" and also planned "to set up a technical assistance information office supported by a multi-country PHARE programme" to serve other "assistance requirements [that] are common to all the associated countries." BULL. EUR. UNION, May 1995, point 1.4.63. *See also* CEEC White Paper, *supra* note 29, Part 5; White Paper Follow-Up, *supra* note 29 (Commission "set out practical arrangements for setting up the technical assistance information exchange office . . . geared to ensuring adequate delivery of those services provided jointly to some or all of the associated countries" and introduced "the new multicountry PHARE programme . . . aimed at complementing PHARE technical assistance provided under the national framework programmes . . . [whose] objectives [are]: to provide certain support services such as the organization of seminars, establishment of legal glossaries, etc., direct; to provide advice to individual associated countries either directly or through a panel of experts; to channel requests for assistance to other sources . . . ; [and] to assist with the creation of databases and with access to information."). The Commission established a new Technical Assistance Information Office [TAIEX] in January 1996. CEEC countries requested that the activities of TAIEX be prolonged beyond the end of 1997, and that this office "should have a lot of flexibility as regards the practical assistance it provides in the legislative field, and that it should be adapted to the specific needs of each" CEEC. *Internal Market Meeting*, in TOGETHER IN EUR., No. 106, Apr. 1, 1997.

Special PHARE funds (in the amount of ECU 18.5 million) were allocated to prepare the EA countries for integration into the internal market of the EU. Commission Decision of 19 October 1995, *reported in* BULL. EUR. UNION, Oct. 1995, point 1.4.65. Breakdowns showing PHARE funds allocated by sector do not adequately reflect the level of funding that actually goes to bringing the EA countries in line with the *acquis communautaire*, since the *acquis* cuts across practically all sectors. Thus, the direct allocation of funds for approximation of legislation is misleading. *See New PHARE Orientations*, *supra* note 58 (showing PHARE commitments for 1990-1996, broken down by sector and by recipient). Relatively little has been committed for approximation of legislation *per se* (e.g. ECU 0 for the Visegrád countries; ECU 19.5 million for other EAs and PCAs; and ECU 10 million for a "horizontal programme"; totalling ECU 29.5 million). *Id.* However, compare this meager sum with the total funds committed for administration and public institutions (ECU 317.7 million); civil society and democratisation (ECU 59.4 million); and education, training and research (ECU 859.5 million). *Id.* In fact, the only other category receiving fewer funds than approximation of legislation during this period was consumer protection (ECU 11 million). *Id.* Approximation is relevant in nearly every sector listed in the PHARE breakdown, as suggested by the breadth of the approximation provisions in the EAs (and PCAs), *supra* notes 49 and 52. *See* Buxbaum, *supra* note 49, at 129-30 (analyzing the "integrated programs" whereunder legal reform and assistance are components of sectoral reform programs).

⁶² In early 1997 the Commission "approved new orientations" for PHARE which would turn it "from a demand driven programme . . . into an accession driven programme." *New PHARE Orientations*, *supra* note 58. Under the new orientations, which only apply to the ten EA countries, PHARE "will now concentrate on strengthening the CEECs' democratic institutions and public administrations, and supporting investments that improve CEEC enterprises and infrastructures." *Id.*

B. ASSOCIATION STATUS OF CEECS: PCA COUNTRIES

1. The Former Union of Soviet Socialist Republics (USSR)

The "First Generation" trade and cooperation agreement between the EC and the USSR was concluded on 18 December 1989, and entered into effect on 1 April 1990.⁶³ After the dissolution of the USSR and the creation of the CIS in December 1991,⁶⁴ the EU arranged to extend the benefits of the agreement with the USSR to the successor states,⁶⁵ but simultaneously decided to work towards negotiating separate agreements that would reflect their different political, economic, and geographic characteristics.⁶⁶ The EU

⁶³ Council Decision 90/116/EEC on the Conclusion of the Agreement Between the FEC and the ECSC and the USSR on Trade and Commercial and Economic Cooperation, 1990 O.J. (L 68) 3, 1990 O.J. (L 138) 1. This was a non-preferential agreement covering trade in all products except for those covered by specific agreements (i.e. textiles, fisheries products, and products covered by the ECSC Treaty). *See also* Agreement Between the EEC and the USSR on Trade in Textile Products, *initialed on Dec. 11, 1989, implemented by* Decision 89/674, 1989 O.J. (L 397) 1; Council Decision of 3 June 1991, 1991 O.J. (L 164) 1.

⁶⁴ The Minsk Agreement between Belarus, Russia and Ukraine declared the dissolution of the USSR and the creation of the Commonwealth of Independent States (CIS) in its place. *See* Agreement Establishing the Commonwealth of Independent States, Dec. 8, 1991, 31 I.L.M. 138 (1992) [hereinafter CIS Agreement]. Shortly thereafter, the Alma-Ata Declaration was signed (together with a Protocol to the Minsk Agreement) by eleven of the former Soviet Republics: Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. *See* Alma-Ata Declaration and Protocol to the Minsk Agreement, Dec. 21, 1991, 31 I.L.M. 147 (1992). Georgia joined the CIS on Oct. 8, 1993. *See generally* Part IV.C.3. The Baltic States (i.e. Estonia, Latvia and Lithuania) are the only former republics of the USSR that did not join the CIS.

⁶⁵ *See, e.g.,* Draft Agreements in the Form of Exchanges of Letters with Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan and Ukraine Relating to the Agreement on Trade and Commercial and Economic Cooperation Signed on 18 December 1989 between the EEC, the ECSC and Euratom and the USSR, BULL. EUR. COMMUNITIES, July-Aug. 1993, point 1.3.18 (noting that the Council decided on July 19, 1993 to adopt these Agreements). *See also* Council Decision 92/585 on Certain Measures Applicable with Regard to the 12 Republics of the Former USSR Concerning Trade in Certain Steel Products Covered by the ECSC Treaty, 1992 O.J. (L 396) 48; Proposal for a Council Decision on the Conclusion of the Agreements in the Form of Exchanges of Letters with Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan and Ukraine Relating to the Agreement on Trade in Textile Products Initialed in Brussels on December 11, 1989 between the EEC and the USSR, COM(93)101 final, 1993 O.J. (C 110) 8; Council Decision 94/277 of 20 December 1993 on the Provisional Application of Certain Agreements and Protocols Between the EEC and Certain Third Countries on Trade in Textile Products, 1994 O.J. (L 123) 1; BULL. EUR. UNION, Apr. 1997, point 1.4.41 (bilateral agreements on trade in textiles renewed until Dec. 31, 1998).

⁶⁶ On July 15, 1992, the Commission called upon the Council to authorize it to negotiate a non-preferential PCA with each of the independent states of the former USSR. *See* BULL. EUR. COMMUNITIES, July-Aug. 1992, point 1.4.3. *See also* Commission of the EC, Annotated Summary of Agreements Linking the Communities with Non-member Countries (January 1993) [hereinafter Commission Annotated Summary], at 4 ("[W]hile establishing that the countries which were contracting parties to the Minsk agreement were the successors to all the agreements concluded by the former USSR, the Community opted for the renegotiation of separate agreements, particularly in view of the fact that the CIS, quite apart from its own varied history, did not comprise all the states which formerly belonged to the USSR . . . These [successor states] were recognized by the European Communities in January 1992 in accordance with the statement of 16 December 1991 adopted at the special European political cooperation meeting of ministers from the Member States, and contacts began immediately

has indicated that the CIS countries should not set their hopes on accession,⁶⁷ but has also taken great pains to establish a dialogue with each country and to cooperate, in the sense of providing each of them with financial and other kinds of support.

Negotiations with Russia and the Ukraine for new PCAs were lengthy⁶⁸ and controversial.⁶⁹ In particular, these countries would not agree

with a view to new agreements, which are most likely to be of a partnership type, though with a differentiated approach in each case in accordance with the political, economic and geographic characteristics of the relevant country, all the countries concerned being dealt with gradually as and when they are recognized by the Member States."). See also Commission Communication to the Council of 9 January 1992 on Relations with the Independent States of the Former Soviet Union, BULL. EUR. COMMUNITIES, Jan.-Feb. 1992, point 1.4.2; Council Conclusions of 10 January 1992, *id.* at point 1.4.3; EP Resolution of 15 July 1993 on Relations Between the European Community and the Independent States of the Former Soviet Union (excluding the Baltic States), 1993 O.J. (C 255) 188 (parliament called on the Community *inter alia* to "conclude partnership and cooperation agreements with the independent States, and for the agreements to differ according to the country . . . Certain of them should provide for political dialogue."); EP Resolution of 7 April 1995 on the Draft Partnership Agreements with the New Independent States, 1995 O.J. (C 109) 1 (parliament called for "stronger relations between the European Union and the new independent States in the interests of promoting political and economic reform" and "called on the Council and the Commission to set in motion the ratification of the agreements . . . except in the case of Russia and Kazakhstan").

⁶⁷ See, e.g., COM(95)163 final and COM(95)207 final (Baltic states were the only former Soviet republics considered eligible for EAs; partnership agreements carry no promise of eventual membership). This fact is also evident from the PCAs themselves which, unlike the EAs, do not contain any statement in the preamble contemplating future membership.

⁶⁸ The Council authorized the Commission to open negotiations with Russia and Ukraine on Oct. 5, 1992. BULL. EUR. COMMUNITIES, Oct. 1992, point 1.4.19. The negotiating directives with each country were subsequently amended. As to the PCA with Russia, see Council Decision of 5 April 1993, BULL. EUR. COMMUNITIES, Apr. 1993, point 1.3.18 (amended in order to "provide for the addition of a future developments clause," to alter provisions pertaining the safeguard clause and on establishment of firms, and to include rules against distortion of competition and on cooperation in preventing illegal activities); and Council Decision of 8 November 1993, BULL. EUR. COMMUNITIES, Nov. 1993, point 1.3.16 (amended in order to "speed up negotiation" and to propose further changes, including "a stipulation that 1998 would constitute a deadline for the decision on whether or not to establish arrangements for free trade between the parties, the introduction of revised trade-protection provisions and the addition of a new section on access to the market in financial services"). As to the PCA with Ukraine, see BULL. EUR. COMMUNITIES, Oct. 1992, point 1.4.19; BULL. EUR. COMMUNITIES, Mar. 1994, point 1.3.51.

⁶⁹ In addition to the debates surrounding the "evolution" clause, described in detail *infra* in text accompanying note 70, there were other zones of friction. For example, Russia objected to the clause permitting the EC to suspend benefits in case of human rights violation, AGENCE EUR., June 4, 1993, at 9, and to classification as a state-trading country for purposes of trade protection measures, OMRI, *supra* note 13, Nov. 21, 1995. The Council decided in June 1996 to consider Ukraine as an economy in transition, rather than a state-trading country. *Conclusions of December 9 General Affairs Council*, REUTER EUR. COMMUNITY REP., Dec. 9, 1996, available in LEXIS, World library, REUEC Capital Library file [hereinafter REUTER EUR. COMMUNITY REP.]. Russia, meanwhile, is still pressing the EU to reclassify it from a non-market to a market economic. RFE/RL Newswire, *supra* note 41, Jan. 28, 1998. For a summary of some of the unusual features of the PCA with Russia, see AGENCE EUR., July 15, 1994, at 8. See generally Economic and Social Committee Opinion of 26 January 1995 on Relations Between the European Union and Russia, Ukraine and Belarus, 1995 O.J. (C 102) 40 [hereinafter ECOSOC Opinion on Russia, Ukraine and Belarus].

For its part, the EU balked in negotiations with Russia, *inter alia* because of events in Chechnya and problems surrounding trade in nuclear material. Relations between the EU and Russia have remained troubled, not least because of disputes surrounding NATO eastward expansion and trade. For example, textile negotiations broke off in November 1995 amidst Russian allegations of protectionism.

to accept mere trade normalization, and bargained for inclusion of an "evolution" or "future events" clause which permits the agreement to be converted to a preferential free trade agreement when circumstances warrant.⁷⁰ Both countries fought hard to have these soft commitments included in the text of their respective PCA. Ultimately, the EU reached an agreement with Russia⁷¹ and with the ⁷²Ukraine for

OMRI, *supra* note 13, Nov. 21, 1996. Russia threatened in February 1996 to impose quotas on imports of EU textiles. AGENCE EUR., Feb. 24, 1996, at 8.

⁷⁰ Russia was the first to insist that its PCA include a "future developments clause to allow for the eventual establishment of a free-trade arrangement . . . once Russia is in a position to comply with GATT obligations, with a view to drawing it into a wider area of cooperation in Europe." BULL. EUR. COMMUNITIES, Apr. 1993, point 1.3.18.

The Ukrainian PCA provides: "[t]he Parties undertake to consider, in particular when Ukraine has further advanced in the process of economic reform, developments of the relevant Titles of this Agreement, . . . , with a view to the establishment of a free trade area between them." Ukrainian PCA, *supra* note 22, art. 3^{bis}. This provision goes on to provide that "the Parties shall consult each other in the year 1998 whether circumstances, and in particular Ukraine's advances in market oriented economic reforms and the economic conditions prevailing there at that time, allow the beginning of negotiations on the establishment of a free trade area." *Id.*

⁷¹ Partnership and Cooperation Agreement Between the European Communities and Their Member States, of the One Part, and the Russian Federation, of the Other Part, BULL. EUR. COMMUNITIES, June 1994, point 1.3.30 (signed June 1994) [hereinafter Russian PCA]. The EP gave its assent on 30 November 1995. 1995 O.J. (C 339) 45. Trade in sensitive goods is covered by special sectoral agreements. See Agreement Between the European Economic Community and the Russian Federation on Trade in Textile Products, 1994 O.J. (L 123) 528; Agreement Between the European Coal and Steel Community and the Russian Federation on Trade in Certain Steel Products, *initialed at Brussels on Nov. 21, 1995*, 1996 O.J. (L 5) 25. New sectoral agreements for textiles were concluded on Dec. 22, 1995. Council Decision of 22 December 1995 on Provisional Application of Certain Agreements Between the EC and Certain Third Countries on Trade in Textile Products, 1996 O.J. (L 81) 1, at 170 and 406-07. New sectoral agreements for steel were concluded after lengthy negotiations. See BULL. EUR. UNION, Mar. 1997, point 1.4.35 (extending autonomous arrangements, pending conclusion of bilateral agreements); BULL. EUR. UNION, Apr. 1997, point 1.4.38 (draft agreement between the ECSC and Russia on trade in certain steel products initialed on 5 April 1997); Council Decisions of 24 July 1997, on the Conclusion of an Agreement in the Form of an Exchange of Letters between the EC and the Russian Federation Establishing a Double-Checking System Without Quantitative Limits in Respect of the Export of Certain Steel Products Covered by the EC and ECSC Treaties from the Russian Federation to the European Community, 1997 O.J. (L 300) 36; Council Regulation 2135/97 of 24 July 1997, on Administering the Double-Checking System, 1997 O.J. (L 300) 1; Commission Decision 2136/97; 12 September 1997 on Administering Certain Restrictions on Imports of Certain Steel Products from the Russian Federation, 1997 O.J. (L 300) 15; Commission Decision 97/742 of 12 September 1997 on the Conclusion of Agreements Between the ECSC and the Russian Federation on Trade in Certain Steel Products, 1997 O.J. (L 300) 51.

See generally ECOSOC Opinion on Russia, Ukraine, and Belarus, *supra* note 69; Commission Communication of 31 May 1995 to the Council and Parliament on The European Union and Russia: The Future Relationship, COM(95)223 final, *reported in* BULL. EUR. UNION, May 1995, point 1.4.78. This, together with the Commission Communications on Central Asia, *infra* note 79, and on Transcaucasia, *infra* note 80, is the first instance in which the Commission used its right of initiative in the area of common foreign and security policy. AGENCE EUR., June 10, 1995, at 9. See also Council Conclusions Concerning a Strategy for EU-Russia Relations, BULL. EUR. UNION, Nov. 1995, point 1.4.81; Strategy on EU-Russia Relations, *supra* note 52, point 2.2.1 (emphasizing Russia's democratic reforms, economic cooperation, cooperation on justice and home affairs, security issues, and foreign policy); EP Resolution on Economic and Trade Relations between the European Union and Russia, 1995 O.J. (C 339) 45 (welcoming the conclusion of the PCA but regretting "that it contained a large number of derogations which were liable to hamper cooperation between members of the CIS"); *Conclusions of December 6 General Affairs Council*, REUTER EUR. COMMUNITY REP., *supra* note 69,

an intermediate type of PCA.⁷³ Pending final ratification of these two PCAs, Interim Agreements⁷⁴ implementing certain provisions of the PCAs were signed, first with the Ukraine,⁷⁵ then with Russia,⁷⁶ and entered into effect on 1 February 1996. The PCA with Russia entered into effect on 1

Dec. 7, 1996 (regarding development of relations with Russia pursuant to the Action Plan adopted in May 1996); Conclusions of EU Council on Implementation of Action Plan for Russia and on Priorities for the Next Phase, AGENCE EUR. DOCS., Jan. 9, 1997.

⁷² The Ukrainian PCA, *supra* note 22, was signed on June 14, 1994. BULL. EUR. UNION, June 1994, point 1.3.34. The EP gave its assent in November 1995. 1995 O.J. (C 339) 42. *See* Common Position 94/779/CFSP on the EU's Objectives and Priorities for Ukraine, 1994 O.J. (L 313) 1; *EU Launches New Action Plan*, EIS EURO-EAST REP., *supra* note 57, Dec. 10, 1996 (General Affairs Council adopted Action Plan for Ukraine); Action Plan for the Development of Relations Between the EU and Ukraine, AGENCE EUR. DOCS., Jan. 15, 1997. Trade in sensitive products is covered by special sectoral agreements. *See* Agreement in the Form of an Exchange of Letters Between the European Community and Ukraine Concerning the Renewal of the Agreement between the EEC and Ukraine on Trade in Textile Products, *initialed on May 5, 1993, as last amended by the Agreement in the Form of an Exchange of Letters, initialed on Dec. 22, 1994*, 1996 O.J. (L 81) 294; Agreement between the European Coal and Steel Community and Ukraine on Trade in Certain Steel Products, *initialed on Dec. 22, 1994*, Commission Decision of 21 December 1996, 1995 O.J. (L 5) 48. New sectoral agreements for steel were concluded after lengthy negotiations.. *See* BULL. EUR. UNION, Mar. 1997, point 1.4.34 (draft agreement between the ECSC and Ukraine on trade in certain steel products initialed on Mar. 20, 1997); Council Decision 97/481 of 26 July 1997 on the Conclusion of an Agreement in the Form of an Exchange of Letters Between the European Community and Ukraine Establishing a Double-Checking System Without Quantitative Limits in Respect of the Export of Certain Steel Products Covered by the EC and ECSC Treaties from Ukraine to the European Community, 1997 O.J. (L 210) 15; Council Regulation 1526/97 of 26 June 1997 on Administering the Double-Checking System, 1997 O.J. (L 210) 1; Commission Decision 1401/97 of 7 July 1997 on Administering Certain Restrictions on Imports of Certain Steel Products from Ukraine, 1997 O.J. (L 193) 12; Commission Decision 97/482 of 5-6 June 1997 on the Conclusion of Agreement Between the ECSC and the Ukraine on Trade in Certain Steel Products, 1997 O.J. (L 210) 31.

⁷³ These agreements have a wider scope than traditional "First Generation" agreements and standard PCAs, in that they include the "evolution" clause contemplating conversion to a free trade agreement in the future, as well as covering a broader range of trade, economic, and political relations.

⁷⁴ Major portions of the PCAs fall within exclusive EC competence in the field of commercial policy, and thus can be implemented by a decision of the competent EC organ, without need for formal ratification by all EU member states.

⁷⁵ The Interim Agreement with Ukraine was signed on June 1, 1995. BULL. EUR. UNION, June 1995, point 1.4.93. *See* Interim Agreement on Trade and Trade-related Matters Between the European Community, the European Coal and Steel Community, and the European Atomic Energy Community, of the One Part, and the Ukraine, of the Other Part, Council Decision 95/541 of 4 December 1995, 1995 O.J. (L 311) 2 [hereinafter EC-Ukraine Interim Agreement]. *See also* AGENCE EUR., June 2, 1995, at 4.

⁷⁶ Implementation of the agreements with Russia was delayed by the conflict in Chechnya. *See* Recommendation of Parliament of 15 June 1995 to the Council on the Development of Relations with the Russian Federation and the Situation in Chechnya, 1995 O.J. (C 166) 90 (EP called on the Council to delay approval of Russia's Interim Agreement and the ratification of the PCA). *See also* BULL. EUR. UNION, June 1995, point 1.4.92 (Russian ministers visited Commission in June to discuss delays). The Interim Agreement was signed on July 17, 1995. BULL. EUR. UNION, July-Aug. 1995, point 1.4.89. *See* Interim Agreement on Trade and Trade-related Matters Between the European Community, the European Coal and Steel Community, and the European Atomic Energy Community, of the One Part, and the Russian Federation, of the Other Part, Council Decision 95/414 of 17 July 95, 1995 O.J. (L 247) 1 [hereinafter EC-Russia Interim Agreement]. *See also* Resolution of 1 February 1996 on the Failure to Consult Parliament on the EU-Russia Interim Agreement, 1996 O.J. (C 47) 26.

December 1997, and with the Ukraine on 1 March 1998.⁷⁷

Since conclusion of the PCAs with Russia and the Ukraine, the EU has moved further in the direction of developing PCA sub-types that accommodate the different needs of countries that are not candidates for eventual accession. For example, the EU has been working on developing a PCA sub-type that falls along the spectrum between the traditional "First Generation" type of PCA and the EA, in order to respond to pressure from countries that already have a "First Generation" PCA but want to deepen their cooperation with the EU.⁷⁸ The EU has also recognized the need to develop special agreements adapted to the needs of countries in particular areas (e.g. Central Asia⁷⁹ and Transcaucasia⁸⁰).

The status of the EU's relations with other CIS countries is summarized below.

a. Belarus

Negotiations with Belarus initially paralleled those the EC conducted with Russia and the Ukraine.⁸¹ A PCA was signed on 6 March

⁷⁷ AGENCE EUR., Nov. 8, 1997, at 6 (Russia); 15 BNA INTERNATIONAL TRADE REPORTER 443 (Mar. 11, 1998)(Ukraine).

⁷⁸ The EU has developed guidelines on this new PCA sub-type which, in general, would be as much like an EA as possible, but without offering the prospect of a free trade area or of later accession. AGENCE EUR., Jan. 31, 1996, at 8. See discussion of negotiations with Albania in text accompanying *infra* notes 115-17.

⁷⁹ Commission Communication of 9 June 1995 on Relations with the Republics of Central Asia: A Strategy for the European Union, COM(95)206 final, reported in BULL. EUR. UNION, June 1995, point 1.4.87 [hereinafter Commission Communication on Central Asia]. See also AGENCE EUR., June 10, 1995, at 10 (summarizing the Commission's recommendations). This document was considered by the General Affairs Council on June 12, 1995. See AGENCE EUR., June 9, 1995, at 8-10.

⁸⁰ Commission Communication of 31 May 1995 to the Council and the Parliament on Towards a European Union Strategy for Relations with the Transcaucasian Republics (i.e. Armenia, Azerbaijan and Georgia), COM(95)205 final, reported in BULL. EUR. UNION, May 1995, point 1.4.79 [hereinafter Commission Communication on Transcaucasia]. The Commission observed that "despite the cease-fires of 1994, the three republics . . . continue to be affected by the fighting in Nagorno-Karabakh and Abkhazia, and are in a difficult economic position." *Id.* See also AGENCE EUR., June 10, 1995, at 10 (summarizing the Commission's recommendations); EP Resolution on Commission Communication, 1997 O.J. (C 33) 133.

The General Affairs Council in June 1995 considered the Commission Communication on Transcaucasia, *supra*, and decided to seek to strengthen contractual relations with these three countries. AGENCE EUR., June 10, 1995, at 10.

⁸¹ The Council approved the Commission's proposal to open negotiations with Belarus for a PCA in October 1992. BULL. EUR. COMMUNITIES, Oct. 1992, point 1.4.19. The negotiating directives were amended in late 1994. BULL. EUR. COMMUNITIES, Nov. 1994, point 1.3.33. The PCA was initialed in December 1994. BULL. EUR. COMMUNITIES, Dec. 1994, point 1.3.48.

1995⁸² and an Interim Agreement shortly thereafter.⁸³ In early 1996, the Commission was optimistic about the reform process in Belarus, and proposed rapid conclusion of the Interim Agreement.⁸⁴ However, the situation in Belarus has deteriorated since then and neither Agreement has entered into effect because of lack of democratic and economic reforms.⁸⁵

b. Moldova

A PCA was concluded on 28 November 1994. In light of Moldova's "good progress towards democracy," the EU and its member states started the process of ratifying the PCA,⁸⁶ but this process has not yet been completed.⁸⁷ In the meantime, certain provisions of the PCA have been

⁸² BULL. EUR. UNION, Mar. 1995, point 1.4.70. See Partnership and Cooperation Agreement Between the European Community and Belarus, reported in BULL. EUR. UNION, Jan.-Feb. 1995, point 1.4.96, and in BULL. EUR. UNION, Mar. 1995, point 1.4.83. This PCA, like those with Russia and Ukraine, contains a "future developments" clause.

⁸³ The Interim Agreement was initialed in April 1995. The Belarussian Foreign Minister emphasized in June 1995 the importance of quick conclusion of the Interim Agreement. BULL. EUR. UNION, June 1995, point 1.4.88.

⁸⁴ Commission Proposal of 28 February 1996, reported in BULL. EUR. UNION, Jan.-Feb. 1996, point 1.4.126 (considering the "domestic political situation . . . and the fact that [Belarus] now had a democratically elected parliament, . . . the time [has] come to conclude and sign the interim Agreement in order to bring it into force as quickly as possible"). The Commission argued that any delay in implementation would have the effect of isolating Belarus and strengthening the position of internal opponents of reform. AGENCE EUR., Feb. 29, 1996, at 6-7. The Interim Agreement was finally signed on Mar. 25, 1996, BULL. EUR. UNION, Mar. 1996, point 1.4.65, just days before the conclusion of the Belarus-Russia Union Treaty, *infra* notes 370-75. See OMRI, *supra* note 13, Mar. 26, 1996 (Commissioner van den Broek hoped that the signing of the agreement would "contribute to the preservation of Belarus's independence and sovereignty").

⁸⁵ EP Resolution of 23 May 1996 on Freedom of Opinion in Albania and Belarus, BULL. EUR. UNION, May 1996, point 1.2.4 (noting that respect for basic democratic principles is a precondition for signing the PCA). President Lukashenko suspended the Belarussian parliament after a controversial referendum on Nov. 24, 1996. See OMRI, *supra* note 13, Nov. 20, 1996; *id.*, Nov. 25, 1996; *id.*, Nov. 26, 1996; *id.*, Nov. 27, 1996; *id.*, Dec. 2, 1996 ("No diplomats from European embassies" in Minsk accepted invitation to attend 28 November ceremony signing new constitution); RFE/RL NEWSLINE, *supra* note 41, Apr. 18, 1997 (EP warned that it would withhold its assent to the PCA); *id.*, June 10, 1997. It is safe to conclude that these and subsequent Commissioner van den Broek's prediction that Belarus was "on the farthest approaches from being admitted into EU." OMRI, *supra* note 13, Nov. 3, 1995. The Council of Europe (CE) Parliamentary Assembly suspended Belarus's special guest status, but the CE itself indicated that it would "continue assisting Belarus in the development of a civil society." *Id.*, Jan. 17, 1997. See also Proposal for a Council Decision on a TACIS Civil Society Development Programme for Belarus for 1997, COM(97)441 final.

⁸⁶ OMRI, *supra* note 13, Nov. 3, 1995 (quoting Commissioner van den Broek). The EP gave its assent on Nov. 30, 1995. 1995 O.J. (C 339) 13. See also EP Resolution on the Economic and Trade Aspects of the Partnership and Cooperation Agreement Between the EU and the Republic of Moldova, 1995 O.J. (C 339) 49.

⁸⁷ AGENCE EUR., Feb. 17, 1996, at 10 (meeting between Commissioner van den Broek and the foreign minister of Moldova); AGENCE EUR., May 14, 1997, at 10 (additional protocol to PCA signed; EU proposes draft declaration allowing for provisional application of all provisions while awaiting formal entry into force). Moldova is pushing for further integration in the form of an EA. RFE/RL Newsline, *supra* note 41, Dec. 15, 1997.

implemented by an Interim Agreement.⁸⁸

c. Transcaucasia

The Commission proposed in May 1995 "an overall strategy including provision for partnership and cooperation Agreements with each of" Armenia, Azerbaijan and Georgia.⁸⁹ At its meeting in June 1995, the General Affairs Council called upon the Commission to begin negotiations for a PCA adapted to the special situation in all three Transcaucasian countries.⁹⁰ Commissioner van den Broek visited the Transcaucasian countries in early October 1995 to discuss, *inter alia*, the negotiation of the planned PCAs.⁹¹

PCAs were concluded with Armenia,⁹² Azerbaijan⁹³ and Georgia⁹⁴ on 22 April 1996,⁹⁵ but none of them have yet entered into effect.

⁸⁸ Interim Agreement on Trade and Trade-related Matters Between the European Community, the European Coal and Steel Community, and the European Atomic Energy Community, of the One Part, and the Republic of Moldova, of the Other Part, Council Decision 96/161 of 29 January 1996, 1996 O.J. (L 40) 11. The Interim Agreement entered into force on May 1, 1996. 1996 O.J. (L 90) 37. *See also* Council Decision 97/550 of 21 March 1996 on the Conclusion of the Agreement Between the European Community and the Republic of Moldova on Trade in Textile Products, 1997 O.J. (L 227) 1.

⁸⁹ Commission Communication on Transcaucasia, *supra* note 80 (noting the geopolitical importance of Transcaucasia to the EU, which "has energy interests there"). *See also* AGENCE EUR., June 10, 1995, at 10.

⁹⁰ AGENCE EUR., June 14, 1995, at 8. It was understood that the Commission should seek to develop formulas adapted to the special situation in the Transcaucasus countries. *Id.* *See also* Commission Communication on Transcaucasia, *supra* note 80.

⁹¹ BULL. EUR. UNION, Oct. 1995, point 1.4.94. As a matter of fact, negotiations with Georgia had already commenced by that date, and those with Armenia and Azerbaijan were due to start later that month.

⁹² Partnership and Cooperation Agreement Between the European Communities and Their Member States on the One Part, and the Republic of Armenia on the Other Part, *reported in* BULL. EUR. UNION, Mar. 1997, point 1.4.73.

For an earlier sectoral agreement, *see* Agreement of 20 July 1993 in the Form of an Exchange of Letters Between the EC and the Republic of Armenia Maintaining in Force the Agreement Between the EEC and the Republic of Armenia on Trade in Textile Products, July 20, 1993, *as amended by* the Agreement of 23 February 1995 in the Form of an Exchange of Letters, 1996 O.J. (L 263) 3.

⁹³ Partnership and Cooperation Agreement Between the European Communities and Their Member States on the One Part, and the Republic of Azerbaijan on the Other Part, *reported in* BULL. EUR. UNION, Apr. 1996, point 1.4.72, *and in* BULL. EUR. UNION, Mar. 1997, point 1.4.76.

⁹⁴ Partnership and Cooperation Agreement Between the European Communities and Their Member States on the One Part, and the Republic of Georgia on the Other Part, *reported in* BULL. EUR. UNION, Apr. 1996, point 1.4.72, *and in* BULL. EUR. UNION, Mar. 1997, point 1.4.79.

⁹⁵ BULL. EUR. UNION, Apr. 1996, point 1.4.72. *See also* Commission Proposal for a Council Decision on Conclusion of the Agreements, BULL. EUR. UNION, Mar. 1996, point 1.4.64. The PCAs with all three Transcaucasus countries were also initialed on the same day in Dec. 1995. BULL. EUR. UNION, Dec. 1995, point 1.4.98.

⁹⁶ The EP gave its assent to all three PCAs on March 13, 1997. *See* EP Resolution on the Economic and Trade Aspects of the Partnership and Cooperation Agreements Between the EU and the Republics of Armenia, Azerbaijan, and Georgia, 1997 O.J. (C 115) 124.

Meanwhile, Interim Agreements with Armenia⁹⁷ and Georgia⁹⁸ were concluded in April 1997, while the Interim Agreement with Azerbaijan has lagged behind.⁹⁹

d. Central Asia

Discussions aimed at preparing new bilateral agreements to replace the 1989 "First Generation" agreement with the USSR started as early as 1992.¹⁰⁰ However, negotiations were delayed by political instability in the region.

PCAs with Kazakhstan and Kyrgyzstan were initialed in May 1994, but no final agreements were concluded until early 1995. The ratification process for the PCA with Kazakhstan¹⁰¹ was held up due to lack of democratic reforms.¹⁰² The PCA with Kyrgyzstan,¹⁰³ on the other hand, encountered fewer obstacles.¹⁰⁴ Neither PCA had entered into effect as of April 1998. However, Interim Agreements implementing certain provisions

⁹⁷ Council Decision of 29 April 1997 on the Conclusion of the Interim Agreement on Trade and Trade-related Matters Between the EC, ECSC and EURATOM, of the One Part, and the Republic of Armenia, of the Other Part, 1997 O.J. (L 129) 1. The Interim Agreement entered into effect on Dec. 1, 1997. 1997 O.J. (L 316) 11.

⁹⁸ Council Decision of 29 April 1997 on the Conclusion of the Interim Agreement on Trade and Trade-related Matters Between the EC, ECSC and EURATOM, of the One Part, and Georgia, of the Other Part, 1997 O.J. (L 129) 22. The Interim Agreement entered into effect on Sept. 1, 1997. 1997 O.J. (L 206) 64.

⁹⁹ The Interim Agreement was initialed on Sept. 20, 1996. BULL. EUR. UNION, Nov. 1996, point 1.4.89. See Proposal for a Council Decision on the Conclusion of the Interim Agreement Between the EC, ECSC and EURATOM, of the One Part, and the Republic of Azerbaijan of the Other Part, COM(96)613 final.

¹⁰⁰ The Commission proposed opening PCA negotiations with all independent States of the former Soviet Union in 1992. BULL. EUR. COMMUNITIES, Jan.-Feb. 1992, points 1.4.2-3. The Council adopted this proposal with respect to Kazakhstan and Kyrgyzstan in October 1992. BULL. EUR. COMMUNITIES, Oct. 1992, point 1.4.19. As for Tajikistan and Turkmenistan, see BULL. EUR. COMMUNITIES, Apr. 1994, point 1.4.5.

¹⁰¹ Partnership and Cooperation Agreement Between the European Communities and Their Member States, of the One Part, and Kazakhstan, of the Other Part, reported in BULL. EUR. COMMUNITIES, May 1994, point 1.3.35, and in BULL. EUR. UNION, Mar. 1997, point 1.4.82. The PCA with Kazakhstan was concluded on Jan. 23, 1995. BULL. EUR. UNION, Jan.-Feb. 1995, point 1.4.97.

¹⁰² PCA was submitted to the European Parliament for its approval on June 12, 1995. 1995 O.J. (C 166) 6. See EP Resolution on the Draft Partnership Agreements with the New Independent States, 1995 O.J. (C 109) 298 (holding up the process of ratifying the agreement with Kazakhstan); Commission Communication on Central Asia, *supra* note 79 ("In the case of Kazakhstan, the fact that the suspension of its parliament has led to ratification of the [PCA] being postponed should not prevent sectoral agreements . . . from being negotiated."). The EP finally gave its assent on Mar. 13, 1997. 1997 O.J. (C 115) 196.

¹⁰³ Partnership and Cooperation Agreement Between the European Communities and Their Member States, of the One Part, and Kyrgyzstan, of the Other Part, reported in BULL. EUR. COMMUNITIES, May 1994, point 1.3.36. The PCA was concluded on Feb. 9, 1995. BULL. EUR. UNION, Jan.-Feb. 1995, point 1.4.99.

¹⁰⁴ The European Parliament gave its assent to the PCA on Nov. 30, 1995. 1995 O.J. (C 339) 39. See Commission Communication on Central Asia, *supra* note 79 ("Kyrgyzstan's [PCA] should be ratified and its Interim Agreement signed as soon as possible.").

of the PCAs with Kazakhstan¹⁰⁵ and Kyrgyzstan¹⁰⁶ were concluded in 1996.

Relations between the EU and other Central Asian republics progressed even more slowly. Negotiations with Tajikistan¹⁰⁷ and Turkmenistan¹⁰⁸ started early but were stalled by political instability in those countries, whereas relations with Uzbekistan did not even get off the ground until considerably later. The Council in June 1995 called upon the Commission to begin exploratory talks with all three countries.¹⁰⁹ Relations have progressed with Uzbekistan,¹¹⁰ culminating in the conclusion of a PCA¹¹¹ and an Interim Agreement.¹¹² However, little progress has been made with Tajikistan and Turkmenistan.¹¹³

¹⁰⁵ The Commission initialed a draft Interim Agreement in December 1994, BULL. EUR. COMMUNITIES, Dec. 1994, point 1.3.50, and proposed that it be concluded in early 1995. BULL. EUR. UNION, Jan.-Feb. 1995, point 1.4.98. The EP's approval was not forthcoming until Apr. 19, 1996. EP Opinion on the Proposal for a Council Decision on the Conclusion by the EC of the Interim Agreement, 1996 O.J. (C 141) 248. See Interim Agreement on Trade and Trade-related Matters Between the EC, ECSC and EURATOM, of the One Part, and the Republic of Kazakhstan, of the Other Part, Council Decision of 13 May 1996, 1996 O.J. (L 147) 1 and 1996 O.J. (L 306) 49. The Interim Agreement entered into effect on April 1, 1997. 1997 O.J. (L 64) 16.

¹⁰⁶ The Commission proposed conclusion of the Interim Agreement on Mar. 1, 1995, BULL. EUR. UNION, Mar. 1995, point 1.4.72, but it was not actually signed until Nov. 28, 1996. *Kyrgyzstan Signs Interim Agreement with EU*, EUR. REP.: EURO. INFO. SERVICE, Dec. 11, 1996, available in LEXIS, News Library, AIW File [hereinafter EIS EUR. REP.]; AGENCE EUR., July 25, 1997, at 11. See Interim Agreement on Trade and Trade-related Matters between the EC, ECSC and EURATOM, of the One Part, and the Republic of Kyrgyzstan, of the Other Part, 1997 O.J. (L 235) 3.

¹⁰⁷ BULL. EUR. COMMUNITIES, Apr. 1994, point 1.4.5. The EU suspended TACIS aid to Tajikistan in 1992, which by September 1992 was in the first stages of a civil war that has lasted for more than five years. See also AGENCE EUR., June 10, 1995, at 10 (Commission noted that the "situation . . . is such that the option of a partnership agreement must be avoided at the moment").

¹⁰⁸ BULL. EUR. COMMUNITIES, Sept. 1993, point 1.3.15; BULL. EUR. COMMUNITIES, Apr. 1994, point 1.4.5.

¹⁰⁹ AGENCE EUR., June 12-13, 1995, at 5-7. See also Commission Communication on Central Asia, *supra* note 79 (noting that no negotiations for a PCA can be undertaken until such time as "the political conditions which the [EU] has attached to the negotiation of [PCAs] . . . have been fulfilled" but that "sectoral agreements in areas such as textiles, trade in nuclear materials and . . . hazardous waste" could be explored in the meantime).

¹¹⁰ After the Commission conducted exploratory talks, BULL. EUR. UNION, Nov. 1995, point 1.4.89, and reported on the progress of democratic reforms, the Council in February 1996 approved opening negotiations for a PCA with Uzbekistan. BULL. EUR. UNION, Jan.-Feb. 1996, point 1.4.128; AGENCE EUR. Feb. 28, 1996, at 6.

¹¹¹ Draft Partnership and Cooperation Agreement Between the European Community and Their Member States, of the One Part, and Uzbekistan, of the Other Part, *reported in* BULL. EUR. UNION, Jan.-Feb. 1996, point 1.4.128. The PCA was concluded on June 21, 1996, BULL. EUR. UNION, June 1996, point 1.4.81, but had not entered into force as of April 1998.

¹¹² Draft Interim Agreement on Trade and Trade-Related Matters, COM(96)466 final, *reported in* BULL. EUR. UNION, Sept. 1996. The IA was signed on Nov. 14, 1996. BULL. EUR. UNION, Nov. 1996, point 1.4.91.

¹¹³ The Commission conducted exploratory negotiations with Turkmenistan in 1996, and recommended that negotiations towards a PCA could begin if the "current momentum of political and economic reform were maintained." BULL. EUR. UNION, Dec. 1996, point 1.4.77. See also *EU/Turkmenistan: Time to Build New Links?*, EIS EURO-EAST REP., *supra* note 57, Dec. 10, 1996. The EU welcomed the June 1997 peace agreement between the Tajik Government and the United Tajik Opposition. AGENCE EUR., July 3, 1997, at 4. However, fighting was still ongoing in early 1998. OMRI *supra* note 13, March 30, 1998.

2. Balkan Countries¹¹⁴

Negotiations between the EC and Albania commenced in late 1991.¹¹⁵ The PCA between Albania and the EC was concluded on 11 May 1992 and entered into effect on 1 December 1992.¹¹⁶ Albania has been pushing for closer integration with the EU, and has met with limited success.¹¹⁷

The EC concluded a series of agreements with the former Socialist Federal Republic of Yugoslavia in the 1980s.¹¹⁸ Negotiations of any kind with successor states to the former Yugoslavia were severely restricted by the war (including the EC embargo on the Federal Republic of Yugoslavia,

¹¹⁴ Excluding Bulgaria, Romania, and Slovenia, all of which are EA countries and which, in any case, prefer to be considered Central European rather than Balkan countries. *See supra* note 32.

¹¹⁵ The Council authorized the Commission to open negotiations in September 1991. BULL. EUR. COMMUNITIES, Sept. 1991, point 1.3.19.

¹¹⁶ Agreement Between the EEC and Albania on Trade and Commercial and Economic Cooperation, 1992 O.J. (L 343) 2, implemented by Council Decision 92/535 of 26 October 1992, 1992 O.J. (L 343) 1. "The aim of the Agreement . . . is the harmonious development and diversification of trade, and the development of various types of commercial and economic cooperation." Commission Annotated Summary, *supra* note 66, at 101. *See generally* Economic and Social Committee Opinion of 31 May 1995 on Relations Between the European Union and Albania, 1995 O.J. (C 236) 65 [hereinafter ECOSOC Opinion on Albania].

¹¹⁷ In response to Albanian pressure for further integration, the EU has moved to develop a PCA sub-type that falls mid-way between the current association agreement and an EA. The ECOSOC Opinion on Albania, *supra* note 116, observed that since Albania is both a Central European and a Mediterranean country, it should also be covered by the EU's Mediterranean policy, and called for acceleration of "the procedures for establishing an association." *Id.* The Commission presented a draft mandate for negotiation of a *sui generis* agreement with Albania. AGENCE EUR., Jan. 31, 1996, at 8. The new agreement was expected to look very much like an EA, except that it would not contemplate either creation of a free trade area or eventual accession; in addition, the new agreement with Albania was expected to provide more lenient trade terms to Albania, in view of its difficult economic situation. *Id.* At one point it appeared that Albania might manage to cross-over from being a PCA country to an EA country, *see* Maresceau, *supra* note 1, at 1330 n.10, but this is unlikely in the light of the events of early 1997.

¹¹⁸ Cooperation Agreement between the EEC and the Socialist Federal Republic of Yugoslavia, 1983 O.J. (L 41) 2; Trade Agreement, 1987 O.J. (L 318) 51. In response to the disintegration of the Socialist Federal Republic of Yugoslavia in 1991, the EC terminated its agreements with that state. Council Decision 91/602/EEC Denouncing the Cooperation Agreement Between the EEC and the Socialist Federal Republic of Yugoslavia, 1991 O.J. (L 325) 23. The benefits of these earlier trading arrangements were partially extended to some of the successor states by Council Regulation 3567/91 Concerning the Arrangements Applicable to Imports into the Community of Products Originating in the Republics of Bosnia-Herzegovina, Croatia, Macedonia and Slovenia, 1991 O.J. (L 342) 1, and later fully restored to all republics which were cooperating in the peace process by Council Regulation 545/92 Concerning the Arrangements Applicable to the Import into the Community of Products Originating in the Republics of Croatia and Slovenia and the Yugoslav Republics of Bosnia-Herzegovina, Macedonia and Montenegro, 1992 O.J. (L 63) 1. *See also* Council Regulation 546/92 Establishing Ceilings and Community Surveillance for Imports of Certain Products Originating in Croatia, Slovenia and the Yugoslav Republics of Bosnia-Herzegovina, Macedonia and Montenegro, 1992 O.J. (L 63) 39; Council Regulation 547/92 Opening and Providing for the Administration of Community Tariff Quotas for Certain Products Originating in Croatia, Slovenia and the Yugoslav Republics of Bosnia-Herzegovina, Macedonia and Montenegro, 1992 O.J. (L 63) 41. *See generally* BULL. EUR. COMMUNITIES, Jan.-Feb. 1992, point 1.4.18.

which comprises Serbia and Montenegro¹¹⁹), by a land dispute between Slovenia and Italy,¹²⁰ and by the Greek embargo on the former Yugoslav Republic of Macedonia.¹²¹ However, progress towards settling these disputes has allowed some steps to be taken towards normalization. The EU concluded a preferential PCA with Macedonia in April 1997.¹²² Association

¹¹⁹ Serbia and Montenegro formed a new Federal Republic of Yugoslavia on Apr. 27, 1992. On May 27, 1992, the Commission proposed removing Montenegro from the list of former Yugoslav republics which were cooperating in the peace process and thus entitled to benefits accorded earlier that year by Regulation 545/92 (discussed *supra* at note 118), since Montenegro had joined Serbia in the new Federal Republic of Yugoslavia, and imposing trade embargoes against Serbia and Montenegro. COM(92)244 final; COM(92)245 final. Specifically, the Commission proposed to "prohibit the import into the territory of the Community of all products originating in or coming from the Republics of Serbia and Montenegro, the export to these republics of all products originating in or coming from the Community, and any activity whose object or effect is to promote, directly or indirectly, trade-related transactions" (with the exception of "products intended for strictly medical purposes, foodstuffs or materials and supplies for essential civilian needs"). BULL. EUR. COMMUNITIES, May 1992, point 1.2.20. The Council broadened the Commission's proposals. See Regulation 1432/92 Prohibiting Trade Between the EEC and the Republics of Serbia and Montenegro, *amended by* Council Regulation 1433/92/ECSC, 1992 O.J. (L 151) 4. See generally BULL. EUR. COMMUNITIES, May 1992, points 1.2.19-21; BULL. EUR. COMMUNITIES, June 1992, points 1.4.12-13. The embargo was tightened in Sept. 1992, BULL. EUR. COMMUNITIES, Sept. 1992, points 1.3.20-22, and again in Apr. 1993, Council Regulation 990/93 Concerning Trade Between the EEA and the Federal Republic of Yugoslavia (Serbia and Montenegro), 1993 O.J. (L 102) 14, *reported in* BULL. EUR. COMMUNITIES, Apr. 1993, point 1.3.27. See also Commission Regulation 2068/93 repealing Commission Regulation 2725/92 Concerning the Prohibition of Trade Between the EEC and the ECSC on the One Hand, and the Republics of Serbia and Montenegro on the Other, 1993 O.J. (L 187) 37. Some of the restrictions were lifted in 1994. See Council Decision 94/673/CFSP Concerning the Common Position, Defined on the Basis of Article J.2 of the Treaty on European Union, and Regarding the Suspension of Certain Restrictions on Trade with the Federal Republic of Yugoslavia (Serbia and Montenegro), 1994 O.J. (L 266) 11; Council Regulation 2472/94 Suspending Certain Elements of the Embargo on the Federal Republic of Yugoslavia (Serbia and Montenegro), 1994 O.J. (L 266) 8. These measures were extended repeatedly. See, e.g., Council Decision 95/11/CFSP Concerning the Common Position, Defined on the Basis of Article J.2 of the Treaty on European Union, and Regarding the Extension of the Suspension of Certain Restrictions on Trade with the Federal Republic of Yugoslavia (Serbia and Montenegro), 1995 O.J. (L 20) 2, *extended by* Council Decision 95/150/CFSP, 1995 O.J. (L 99) 2; Council Regulation 109/95 Amending Council Regulation 2472/94 Suspending Certain Elements of the Embargo on the Federal Republic of Yugoslavia (Serbia and Montenegro), 1995 O.J. (L 20) 1, *extended by* Council Regulation 984/95, 1995 O.J. (L 99) 1.

The Commission proposed to repeal the sanctions in the aftermath of the Nov. 1995 Dayton Peace Agreement. COM(95)610 final, *reported in* BULL. EUR. UNION, Nov. 1995, point 1.4.66.

¹²⁰ See text accompanying *infra* note 141.

¹²¹ Greece imposed an economic embargo on Macedonia in February 1994, in response to the U.S. decision to grant diplomatic recognition to the so-called Former Yugoslav Republic of Macedonia. See generally, CONSTANTIN STEFANOU & HELEN XANTHAKI, A LEGAL AND POLITICAL INTERPRETATION OF ARTICLES 224 AND 225 OF THE TREATY OF ROME (1997).

¹²² Draft Trade and Cooperation Agreement between the EC and the Former Yugoslav Republic of Macedonia, *reported in* BULL. EUR. UNION, Nov. 1995, point 1.4.64; Commission Proposal for a Council Decision, COM(96)0533 final; 1997 O.J. (C 79) 1. The PCA (accompanied by a financial protocol) was signed on Apr. 29, 1997. BULL. EUR. UNION, Apr. 1997, point 1.4.73; RFE/RL NEWSLINE, *supra* note 41, Apr. 30, 1997. The EP gave its assent in Oct. 1997. AGENCE EUR., Oct. 30, 1997, at 6. See also Proposal of 25 November 1996 for a Council Decision Concerning the Conclusion of an Agreement in the Field of Transport Between the European Community and the Former Yugoslav Republic of Macedonia, 1997 O.J. (C 79) 159; Council Decision of 24 July 1997 on the Provisional Application of the Agreement on Trade in Textile Products Between the European Community and the Former Yugoslav Republic of Macedonia, 1997 O.J. (L 233) 32.

is still a remote possibility for the other countries. The EU has taken preliminary steps to define its approach¹²³ towards Bosnia-Herzegovina,¹²⁴ Croatia,¹²⁵ and the Federal Republic of Yugoslavia.¹²⁶

C. ASSOCIATION STATUS OF CEECS: EA COUNTRIES

1. The Visegrád Group

Hungary, Poland, and the Czech and Slovak Republics (then Czechoslovakia) began coordinating their positions at a meeting in Visegrád, Hungary, in February 1991.¹²⁷ At that time, each of them was

¹²³ Council Conclusions of 26 February 1996 on Former Yugoslavia, *reported in* BULL. EUR. UNION, Jan.-Feb. 1996, point 1.4.108 (calling for a "broad approach" including PCAs); Commission Report of 2 October 1996 to the Council and the European Parliament on Common Principles for Future Contractual Relations with Certain Countries in South-Eastern Europe, COM(96)476 final, *reported in* BULL. EUR. UNION, Oct. 1996, points 1.4.65 and 2.3.1 (defining the objectives, conditions and principles to be applied in relations with Bosnia-Herzegovina, Croatia and the Federal Republic of Yugoslavia); BULL. EUR. UNION, Apr. 1997 points 1.4.67 and 2.2.1 (noting Council Conclusions of 29 April 1997 on the principle of conditionality governing the development of the EU's relations with certain countries in south-east Europe).

¹²⁴ During the Cannes Summit, members of the European Parliament organized a demonstration in support of immediate accession of Bosnia-Herzegovina. AGENCE EUR., June 28, 1995, at 8. Bosnia-Herzegovina requested associate member status in early 1997. EUR. DIALOGUE, *supra* note 41 (May/June 1997).

¹²⁵ The Commission proposed opening negotiations for a PCA with Croatia on Feb. 24, 1995. BULL. EUR. UNION, Jan.-Feb. 1995, point 1.4.85. The Council adopted negotiating directives on March 6, 1995, but did not authorize the Commission to commence negotiations at that time, pending Croatian agreement to the maintenance of a United Nations force on its territory. BULL. EUR. UNION, Mar. 1995, point 1.4.61. The Council authorized the opening of negotiations with Croatia on April 10, 1995. BULL. EUR. UNION, Apr. 1995, points 1.4.73 and 1.4.75. Negotiations actually commenced in June 1995. BULL. EUR. UNION, June 1995, point 1.4.78; AGENCE EUR., June 21, 1995, at 10. In December 1996, the EP passed a resolution "expressing deep concern at the government's treatment of the independent Zagreb radio station Radio 101." OMRI, *supra* note 13, Dec. 16, 1996. No PCA had been concluded between the EU and Croatia as of April 1998. Croatia has made it clear that it does not want to participate in subregional groupings "that smack of Yugoslavia," that it wants direct relations with the EU, OMRI, *supra* note 13, Apr. 15, 1996, and that it opposes the "EU's group approach to bids for membership by the countries of former Yugoslavia." OMRI, *supra* note 13, Nov. 6, 1996.

¹²⁶ Commercial privileges were finally restored to the Federal Republic of Yugoslavia in April 1997. Council Regulation Amending Regulation 70/97 Concerning the Arrangements Applicable to Imports into the Community, *reported in* BULL. EUR. UNION, Apr. 1997, points 1.4.11 and 1.4.68 (noting Council Regulation of 29 April 1997 which included the FRY in the autonomous preferential arrangements granted to imports from Bosnia-Herzegovina, Croatia, Macedonia and Slovenia). However, this was shortlived. The EU announced in December 1997 that it would no longer extend trade benefits to Yugoslavia. RFE/RL NEWSLINE, *supra* note 41, Dec. 30, 1997.

¹²⁷ In fact, the Czechoslovak, Hungarian and Polish leaders first met in Bratislava in April 1990 to discuss security concerns, and it was not until later that the "emphasis [shifted] from disassociation from the East to integration with the West." See Kolankiewicz, *supra* note 2, at 483. See also Milada A. Vachudova, *The Visegrad Four: No Alternative to Cooperation?*, RFE/RL RESEARCH REPORT, Vol. 2, No. 34, Aug. 27, 1993, 38, at 38-39. At the conclusion of the Visegrád Summit in February 1991, the leaders of these (then three) countries stated that "the similarity of the situation that arose in the course of the last decades compels the three states to work toward the achievement of essentially identical goals." Visegrád Summit Declaration, *quoted in* Vachudova at *id.* The arenas of cooperation

engaged in negotiations with the EC for a new bilateral association agreement to replace those concluded in the late 1980s during the last days of COMECON. They perceived their cooperation as "a new pattern of relations in Central Europe."¹²⁸ Since then, these countries have been known as the Visegrád Group,¹²⁹ although they do not consistently act as a unit.¹³⁰ Each of these four countries has concluded an EA which is currently in force.¹³¹ In addition, each of them has formally applied for accession to the

have shifted gradually away from security concerns and "dealing with the East towards dealing with the West." *Id.* at 40. Subsequent summits in Cracow (October 1991) and Prague (April 1992) cemented the new orientation of Visegrád cooperation. *Id.* In particular, the Visegrád countries commenced their discussions on the creation of what became the Central European Free Trade Association at the Cracow Summit in October 1991. Cracow Summit Declaration (Oct. 6, 1991), *quoted in* Vachudova, *supra*. See discussion *infra* of CEFTA in Part IV.C.1. On the whole, cooperation among the Visegrád countries in the field of foreign affairs has "been utilized to a much greater extent than in the strictly regional or civic spheres." *Id.* at 38. See also George Kolankiewicz, *The Other Europe: Different Roads to Modernity in Eastern and Central Europe*, in *EUROPEAN IDENTITY AND THE SEARCH FOR LEGITIMACY* 115-123 (Soledad Garcia ed., 1993).

¹²⁸ Prague Summit Declaration (May 6, 1992), *quoted in* Vachudova, *supra* note 127, at 38.

¹²⁹ In fact, they were called the Visegrád Triangle prior to the break-up of Czechoslovakia. See, e.g., BULL. EUR. COMMUNITIES, May 1992, point 1.2.17 (describing a meeting between EC officials and the Foreign Ministers of Czechoslovakia, Hungary and Poland to discuss "future relations among . . . the 'Visegrád Triangle' countries"), and later the Visegrád Four. See Vachudova, *supra* note 127.

¹³⁰ One of their early significant acts as a group was the Joint Memorandum of September 1992 On Strengthening their Integration with the European Communities and on the Perspective of Accession (1992) (unpublished memorandum) [hereinafter Visegrád Memorandum]. The Visegrád Memorandum set forth proposals for improvements in the association strategy (e.g. establish specific criteria and a timetable for accession; "speed up the process" by strengthening political and financial cooperation, as well as by accelerating economic integration). This memorandum was prepared in connection with the October 1992 meetings of the EC and Visegrád countries' foreign ministers (in Luxembourg on October 5 and in London on October 28). See BULL. EUR. COMMUNITIES, Oct. 1992, points 1.4.6.-7 and 2.3.1. See also Hartnell, *Long and Winding Road*, *supra* note 1, at 201-06.

Since the Visegrád Group established the Central European Free Trade Association in 1993, this organization has become the primary vehicle for cooperation between these countries (even though they are no longer the sole members). See discussion *infra* accompanying notes 289-326.

¹³¹ Czech and Slovak Republics: An EA was signed between the EC and the (then) Czech and Slovak Federal Republic on Dec. 16, 1991. Certain portions of this EA were implemented (effective Mar. 1, 1992) by the Interim Agreement on Trade and Trade-related Matters Between the EEC and the ECSC, of the One Part, and the Czech and Slovak Federal Republic, of the Other Part, 1992 O.J. (L 115) 2. These agreements replaced an earlier "First Generation" PCA between the EC and Czechoslovakia, 1990 O.J. (L 291) 28, which in turn replaced an even earlier one, 1989 O.J. (L 88) 2. After the break-up of the Czech and Slovak Federal Republic, the EC negotiated and eventually concluded separate EAs with both successor states. See Council Decision of 5 April 1993 Authorizing the Commission to Negotiate Two Separate Europe Agreements, Between the Community and the Czech Republic, and Between the Community and Slovakia, *reported in* BULL. EUR. COMMUNITIES, Apr. 1993, point 1.3.16; BULL. EUR. COMMUNITIES, June 1993, point 1.3.17 (new EAs initialed); BULL. EUR. COMMUNITIES, Sept. 1993, points 1.3.11-12 (regarding measures relating to the break-up of Czechoslovakia). See also Commission Decision of 4 October 1993 on the Signature of the Europe Agreements, *reported in* BULL. EUR. COMMUNITIES, Oct. 1993, point 1.3.14. The new EAs between the EC and the Czech and Slovak Republics were signed on Oct. 4, 1993, BULL. EUR. COMMUNITIES, Oct. 1993, point 1.3.14, and entered into force on Feb. 1, 1995. Europe Agreement Establishing an Association Between the European Communities and Their Member States and the Czech Republic, 1994 O.J. (L 360) 2; Europe Agreement Establishing an Association Between the European Communities and Their Member States and the Slovak Republic, 1994 O.J. (L 359) 2.

Hungary: The EA between the EC and Hungary was signed on Dec. 16, 1991, and entered into force on Feb. 1, 1994. Hungarian EA, *supra* note 42. Certain portions of the EA were implemented

EU.¹³²

2. Balkan Countries

Bulgaria¹³³ and Romania¹³⁴ were the next countries to conclude EAs after the Visegrád Group.¹³⁵ Overall, the EU has extended the same treatment to Bulgaria and Romania as it had already extended to the Visegrád Group, much to the dismay of the latter countries, which feared being held back on the road to accession by their "slower" Balkan neighbors.¹³⁶ Both Bulgaria and Romania have formally applied for

(effective Mar. 1, 1992) by the Interim Agreement on Trade and Trade-related Matters Between the EEC and ECSC, of the One Part, and the Republic of Hungary, of the Other Part, 1992 O.J. (L 116) 1. These agreements replaced the earlier "First Generation" PCA, 1988 O.J. (L 327) 1.

Poland: The EA between the EC and Poland was signed on Dec. 16, 1991, and entered into force on Feb. 1, 1994. Polish EA, *supra* note 49. Certain provisions of the EA were implemented (effective Mar. 1, 1992) by the Interim Agreement on Trade and Trade-related Matters Between the EEC and the ECSE, of the One Part, and the Republic of Poland, of the Other Part, 1992 O.J. (L 114) 1. These agreements replaced the earlier "First Generation" PCA, 1989 O.J. (L 339) 1.

¹³² Hungary applied on Mar. 31, 1994, BULL. EUR. COMMUNITIES, Apr. 1994, point 1.3.18; Poland applied on Apr. 5, 1994, BULL. EUR. COMMUNITIES, Apr. 1994, point 1.3.19; Slovakia applied on June 27, 1995, BULL. EUR. UNION, June 1995, point 1.4.58; and the Czech Republic applied on Jan. 17, 1996, BULL. EUR. UNION, Jan.-Feb. 1996, point 1.4.75.

¹³³ The Council authorized the Commission to open negotiations with Bulgaria on May 11, 1992. BULL. EUR. COMMUNITIES, May 1992, point 1.2.12. The EA between Bulgaria and the EC was signed on Mar. 8, 1993, and received the assent of the European Parliament on Oct. 27, 1993. BULL. EUR. COMMUNITIES, Oct. 1993, point 1.3.12. The EA finally entered into force on Feb. 1, 1995. Europe Agreement Establishing an Association Between the European Communities and Their Member States, of the One Part, and the Republic of Bulgaria, of the Other Part, 1994 O.J. (L 358) 3. However, certain provisions of the EA were implemented (effective Dec. 31, 1993) by the Interim Agreement on Trade and Trade-related Matters Between the EEC and the ECSC, of the One Part, and the Republic of Bulgaria, of the Other Part, 1993 O.J. (L 323) 2. These agreements replaced an earlier "First Generation" PCA, 1990 O.J. (L 291) 9. *See generally* Commission Opinion of 23 November 1995 on Relations with Bulgaria, COM(95)528 final.

¹³⁴ The Council authorized the Commission to open negotiations with Romania on May 11, 1992. BULL. EUR. COMMUNITIES, May 1992, point 1.2.12. The EA between Romania and the EC was signed on Feb. 1, 1993, and received the assent of the European Parliament on Oct. 27, 1993. BULL. EUR. COMMUNITIES, Oct. 1993, point 1.3.16. The EA finally entered into force on Feb. 1, 1995. Europe Agreement Establishing an Association Between the European Communities and Their Member States, of the One Part, and Romania, of the Other Part, 1994 O.J. (L 357) 2. However, certain provisions of the EA were implemented (effective May 1, 1993) by the Interim Agreement on Trade and Trade-related Matters Between the EEC and the ECSC, of the one Part, and the Republic of Romania, of the other Part, 1993 O.J. (L 81) 1. These agreements replaced an earlier "First Generation" PCA, 1991 O.J. (L 79) 13, which in turn replaced an even earlier one, 1990 O.J. (L 352) 1.

¹³⁵ *See generally* Economic and Social Committee Opinion on EC Relations with the Countries of Central and Eastern Europe -- Bulgaria and Romania, 1993 O.J. (C 19) 74.

¹³⁶ This fear was particularly acute during the first half of the 1990s, but has faded somewhat as the gap between the Visegrád Group and these two Balkan EA countries has widened. The EU availed itself of the opportunity presented by its second Association Council meetings with Bulgaria and with Romania to register its displeasure with the pace of economic reform (among other troubling issues). *See, e.g.*, Second Meeting of EU-Bulgarian Association Council, AGENCE EUR., Jan. 31, 1996, at 9 (EU welcomed the improvement in Bulgaria's economic situation in 1995, but urged improved trade flows and stressed that "recovery and economic stabilization is not yet based on a sufficient number of industrial sectors; . . . invited Bulgarian authorities to develop 'a coherent policy oriented towards a market economy,' to accelerate the privatization of companies and to improve the country's finances,

accession to the EU.¹³⁷

Slovenia -- the late-comer to the "pre-accession" ranks -- was, until 1997, the only country in former Yugoslavia to have concluded an association agreement with the EC.¹³⁸ A dispute with Italy over land¹³⁹ delayed negotiations for an EA,¹⁴⁰ but once this problem was overcome, agreement was concluded in "record time."¹⁴¹ The EA has not yet entered

notably through a reform of the public sector in order to lower the public deficit to acceptable proportions"). See also Second Meeting of EU-Romania Association Council, *AGENCE EUR.*, Feb. 28, 1996, at 8-9. (EU urged Romania to speed up the process of "developing a genuine market economy, . . . especially with regard to structural adjustment, privatization, the restructuring of public enterprises and adaptation of the financial sector").

The EU imposed compulsory visa requirements on travelers from Bulgaria and Romania in 1994, but not on nationals of other EA countries. Both Balkan EA countries have objected repeatedly to this discriminatory treatment, but to no avail. See, e.g., *BULL. EUR. UNION*, Jan.-Feb. 1996, points 1.4.82 (EU-Bulgaria Association Council) and 1.4.87 (EU-Romania Association Council); *Association Councils*, in *TOGETHER IN EUR.*, No. 104, Mar. 1, 1997 (Bulgaria reiterated its concern); *EU/Romania Association Council*, in *TOGETHER IN EUR.*, No. 107, Apr. 15, 1997 (Romania repeated its criticism); *Politics and Current Affairs*, *EUR. DIALOGUE*, *supra* note 41 (July/Aug. 1997) (Bulgaria abolished its visa requirements for West Europeans).

¹³⁷ Romania applied on June 22, 1995, *BULL. EUR. UNION*, June 1995, point 1.4.57, and Bulgaria on December 16, 1995, *BULL. EUR. UNION*, Dec. 1995, point 1.4.61.

¹³⁸ Soon after the disintegration of the Socialist Federal Republic of Yugoslavia, the Commission requested the Council to authorize it to open negotiations for an association agreement with Slovenia. *BULL. EUR. COMMUNITIES*, June 1992, point 1.4.13. The Council granted this authorization in September 1992. *BULL. EUR. COMMUNITIES*, Sept. 1992, point 1.3.23. The Cooperation Agreement Between the EEC and the Republic of Slovenia was signed on 5 April 1993, implemented by Council Decision 93/407/EEC of 19 July 1993, 1993 O.J. (L 189) 1, and entered into effect on Sept. 1, 1993. The Cooperation Agreement included a future developments clause, which held open the possibility of concluding an EA at a later date. *BULL. EUR. COMMUNITIES*, Apr. 1993, point 1.3.22. See also Protocol on Financial Cooperation Between the EEC and the Republic of Slovenia, 1993 O.J. (L 189) 153; Agreement Between the Member States of the European Economic Community and of the ECSC, of the One Part, and the Republic of Slovenia, of the Other Part, 1993 O.J. (C 210) 17; Agreement Between the EEC and the Republic of Slovenia in the Field of Transport, 1993 O.J. (L 189) 161.

¹³⁹ The dispute concerned Slovene property owned by Italians "when the communists marched in." Caren Chesler, *Italy Faces off with Slovenia on Land Question*, *BUDAPEST SUN*, May 26-June 1, 1994, at 1. Italy thus blocked conclusion of the EA until such time as Slovenia agreed (in June 1995) to change its laws to permit EU nationals to own real estate in Slovenia. *AGENCE EUR.*, June 14, 1995, at 10; *AGENCE EUR.*, June 16, 1995, at 5.

¹⁴⁰ Talk of moving to "the next stage . . . to negotiate a European . . . Agreement" began right after the Cooperation Agreement entered into effect on September 1, 1993. *BULL. EUR. COMMUNITIES*, Sept. 1993, point 1.3.28. However, negotiating directives were not adopted until March 6, 1995. *BULL. EUR. UNION*, Mar. 1995, point 1.4.64. The EA was initialed on June 15, 1995. *BULL. EUR. UNION*, June 1995, point 1.4.62. The EP gave its assent on November 30, 1995. 1995 O.J. (C 339) 40 (noting that "the dispute between Slovenia and Italy should not prevent [conclusion of the EA] or moves to anchor Slovenia in Europe" and urging Slovenia "to meet the conditions laid down by the Council and Commission so the [EA] could be signed as soon as possible").

¹⁴¹ *AGENCE EUR.*, June 16, 1995, at 5. The EA was signed on June 10, 1996, *BULL. EUR. UNION*, June 1996, point 1.4.52, and ratified by the Slovene parliament on July 15, 1997, *AGENCE EUR.*, July 17, 1997, at 7. See *Europe Agreement Between the European Communities and their Member States and the Republic of Slovenia*. The Slovene EA provides for introduction of a free trade area at the end of a (relatively short) six-year transitional period. *BULL. EUR. UNION*, July-Aug. 1995, point 1.4.64. It also includes a commitment by Slovenia to take whatever steps are needed in order to permit citizens of EU Member States, on a reciprocal basis, to acquire real estate in Slovenia on non-discriminatory terms, as of the end of the fourth year following the entry into force of the EA. *BULL. EUR. UNION*, June 1996, point 1.4.49.

into effect.¹⁴² However, an Interim Agreement implementing certain of its provisions has been concluded.¹⁴³ Slovenia is included in the Structured Dialogue and covered by the Pre-accession Strategy and CEEC White Paper that were prepared with earlier EA countries in mind. Slovenia has applied for accession to the EU.¹⁴⁴

3. Baltic States¹⁴⁵

Estonia, Latvia and Lithuania are the only former republics of the USSR that did not join the CIS. Instead, they have focused their efforts on establishing strong relations with the EU and with other East and West European countries. The Baltic States are also the only former Soviet republics considered eligible for EAs and thus, a promise of eventual membership.¹⁴⁶

Each of the Baltic States moved rapidly along the association continuum, though some advanced faster than others.¹⁴⁷ In fact, all three

¹⁴² EP Resolution on the Economic and Trade Aspects of the Europe Agreement Between the EU and the Republic of Slovenia, 1996 O.J. (C 347) 146. Ratification of the EA was held up because Slovenia delayed changing its laws. RFE/RL NEWSLINE, *supra* note 41, June 6, 1997. However, the Slovene parliament voted on July 14, 1997 to amend the constitution to allow foreigners to own property, thus opening the way for ratification of the EA. RFE/RL NEWSLINE, *supra* note 41, July 15, 1997.

¹⁴³ The Interim Agreement was initialed on Sept. 19, 1996, BULL. EUR. UNION, Sept. 1996, point 1.4.34; signed by the Commission on Nov. 11, 1996; and endorsed by the EP on Nov. 15, 1996, BULL. EUR. UNION, Nov. 1996, point 1.4.69; and adopted by the Council on December 20, 1996, BULL. EUR. UNION, Dec. 1996, point 1.4.52. See Interim Agreement on Trade and Trade-related Matters Between the European Community, the European Coal and Steel Community, and the European Atomic Energy Community, of the One Part, and the Republic of Slovenia, of the Other Part, 1996 O.J. (L 344) 2. The Interim Agreement entered into effect on July 1, 1997, but has been applied provisionally since Jan. 1, 1997. 1997 O.J. (L 151) 1.

¹⁴⁴ Slovenia applied for membership on June 10, 1996. BULL. EUR. UNION, June 1996, point 1.4.49.

¹⁴⁵ See generally Economic and Social Committee Opinion of 25 March 1993 on Relations Between the European Community and the Baltic States, 1993 O.J. (C 129) 31; Commission Communication to the Council of 25 October 1994 on Orientations for a Union Approach Towards the Baltic Sea Region, BULL. EUR. COMMUNITIES, Oct. 1994, point 1.3.21; EP Resolution of 14 July 1995 on the Commission Communication, 1995 O.J. (C 249) 215 [hereinafter EP Baltic Sea Resolution]; Council Conclusions of 29 May 1995 on EU Policy Towards the Baltic Sea Region, *reported in* BULL. EUR. UNION, May 1995, point 1.4.70 (observing that the EU is "uniquely placed to contribute to the development and stability of this region" and setting forth guidelines for political cooperation and dialogue as well as economic cooperation) [hereinafter Council Conclusions on Baltic Sea Region]; Commission Report of 29 November 1995 on the Current State of and Perspectives for Cooperation in the Baltic Sea Region, COM(95)609 final, *reported in* BULL. EUR. UNION, Nov. 1995, point 1.4.43 [hereinafter Commission Report on Baltic Sea Region].

¹⁴⁶ COM(95)163 final; COM(95)207 final.

¹⁴⁷ Estonia presents the unique case of a country that accelerated its association with the EU by omitting the usual transition period and removing trade barriers quickly, despite pressure from its neighbors Latvia and Lithuania, which opted for a more gradual approach to liberalization. See *infra* note 278.

Baltics quickly progressed beyond the trade normalization stage,¹⁴⁸ and concluded free trade agreements with the EC in 1994.¹⁴⁹ By the time this first round of agreements entered into effect on 1 January 1995, negotiations towards conclusion of EAs were already well underway.¹⁵⁰ The EAs were concluded on 12 June 1995¹⁵¹ but final ratification was delayed until 1 February 1998.¹⁵² The Baltic States have been included in the Structured Dialogue, and covered by the Pre-accession Strategy and the CEEC White Paper that were prepared with earlier EA countries in mind.¹⁵³

The Baltic States have all formally applied for accession to the

¹⁴⁸ The EC concluded non-preferential PCAs with each of the three Baltic States on May 11, 1992. Agreement Between the EEC and the Republic of Estonia on Trade and Commercial and Economic Cooperation, 1992 O.J. (L 403) 2; Agreement Between the EEC and the Republic of Latvia on Trade and Commercial and Economic Cooperation, 1992 O.J. (L 403) 11; Agreement Between the EEC and the European Atomic Energy Community and the Republic of Lithuania on Trade and Commercial and Economic Cooperation, 1992 O.J. (L 403) 20. The PCAs with Latvia and Lithuania entered into force on Feb. 1, 1993, and the PCA with Estonia on Mar. 1, 1993. See BULL. EUR. COMMUNITIES, May 1992, point 1.2.11 ("The objectives common to these agreements are the development and diversification of commercial relations, and the promotion of economic and commercial cooperation on a basis of equality, non-discrimination, mutual advantage and reciprocity.").

The European Parliament "considered it necessary to convert the recently concluded trade and cooperation agreements into association agreements as rapidly as possible." EP Resolution on the Situation in the Baltic Republics, 1993 O.J. (C 150) 330. In June 1993, "the European Council invited the Commission to submit proposals for developing the EC's existing cooperation agreements with the Baltic States into free trade agreements," and to conclude EAs with these countries "as soon as the necessary conditions [could be] met." Copenhagen Summit Conclusions, *supra* note 31, at point I.14.

¹⁴⁹ The Free Trade Agreements (FTAs) between the EC and each of the three Baltic States were signed on July 18, 1994, and entered into force on Jan. 1, 1995. Agreement on Free Trade and Trade-related Matters Between the European Community, the European Atomic Energy Community, and the European Coal and Steel Community, of the One Part, and the Republic of Estonia, of the Other Part, 1994 O.J. (L 373) 2; Agreement on Free Trade and Trade-related Matters Between the European Community, the European Atomic Energy Community, and the European Coal and Steel Community, of the One Part, and the Republic of Latvia, of the Other Part, 1994 O.J. (L 374) 2; Agreement on Free Trade and Trade-related Matters Between the European Community, the European Atomic Energy Community, and the European Coal and Steel Community, of the One Part, and the Republic of Lithuania, of the Other Part, 1994 O.J. (L 375) 2. See generally BULL. EUR. COMMUNITIES, Dec. 1994, points 1.3.37, 1.3.40 and 1.3.43.

¹⁵⁰ Negotiating directives for conclusion of EAs were adopted in Nov. 1994, BULL. EUR. COMMUNITIES, Nov. 1994, point 1.3.25, and the EAs were initialed on Apr. 12, 1995. BULL. EUR. UNION, Apr. 1995, point 1.4.64.

¹⁵¹ BULL. EUR. UNION, June 1995, point 1.4.63. See also Proposals for Council Regulations on Certain Procedures for Applying the Agreements on Free Trade and Trade-related Matters Between the European Communities and Estonia, Latvia and Lithuania, COM(94)658 final and COM(95)76 final, reported in BULL. EUR. UNION, Apr. 1995, point 1.4.65 (providing for quick implementation of the agriculture provisions of the trade liberalization agreements). The European Parliament gave its assent on Nov. 15, 1995. See Legislative Resolutions on the Proposal for a Council and Commission Decision on the Conclusion of a Europe Agreement: EP 95/0128 (Lithuania), EP 95/0129 (Latvia), and EP/95/0130 (Estonia); 1995 O.J. (C 323) 41.

¹⁵² RFE/FL Newline, *supra* note 41, February 2, 1998.

¹⁵³ See Council Conclusions on Baltic Sea Region, *supra* note 145 (noting that the Baltic States will participate in the Structured Dialogue); BULL. EUR. UNION, June 1995, point 1.4.63 (noting that the political dialogue between the EU and the Baltic States will take place within the multilateral framework set up with the other associated countries, as well as within the bilateral framework of the Association Councils).

EU.¹⁵⁴ In view of various unique aspects of its relations with the Baltics, the Commission proposed, in late 1995, a "new approach" towards the Baltic Sea Region which includes both a political and an economic agenda.¹⁵⁵

D. CONCLUSION

Overall, the EU's association strategy combines bilateral and multilateral approaches to the CEECs. On the one hand, the EU has negotiated separate bilateral association treaties with nearly all countries in Central and Eastern Europe, while on the other, it often treats the associated CEECs as a bloc and encourages them to develop relationships among themselves on a subregional basis.¹⁵⁶ This multifarious approach may well

¹⁵⁴ Latvia applied on Oct. 27, 1995, BULL. EUR. UNION, Oct. 1995, point 1.4.60; Estonia applied on Nov. 28, 1995, BULL. EUR. UNION, Nov. 1995, point 1.4.42; and Lithuania applied on Dec. 8, 1995, BULL. EUR. UNION, Dec. 1995, point 1.4.60.

¹⁵⁵ Commission Report on the Baltic Sea Region, *supra* note 145. See also EP Resolution A4-0158/95 on the Commission Communication to the Council "Orientations for a Union Approach Towards the Baltic Sea Region," 1995 O.J. (C 249) 215. See also discussion *infra* of the Council of Baltic Sea States in Part IV.D.1.

¹⁵⁶ See Commission Enlargement Report, *supra* note 31, at 19 (Commission "hopes that a free trade area can soon be established. The Community should encourage all suitable forms of regional and inter-regional cooperation in Europe, with a view to the eventual creation of a pan-European free trade area"); Commission Communication on Closer Association, *supra* note 29 (focusing on the process of regional economic integration); EP Resolution of 23 April 1993 on Relations between the EC and Bulgaria, 1993 O.J. (C 150) 324 (EP noted "the need to strengthen links between" the EC and all CEECs and "urged the countries of south-eastern Europe, including Bulgaria, to establish closer relations and work together with the Visegrád group of countries"); EP Resolution of 23 April 1993 on Relations Between the EC and Romania, 1993 O.J. (C 150) 325; BULL. EUR. COMMUNITIES, May 1993, point 1.3.15 (Commissioner van den Broek "stressed the need for regional cooperation among the countries . . . to be stepped up" during his May 1993 meetings with leaders from the Visegrád countries); Meeting of the EU-Czech Republic Association Council, BULL. EUR. UNION, Apr. 1995, point 1.4.66 (Association Council stressed that intra-regional cooperation "was an important means of promoting European integration and economic development in the region"); Fifth Annual PHARE Report, *supra* note 58 (noting that funds provided under the PHARE program have increasingly been made available to "support . . . closer cross-border cooperation -- among Central and East European countries themselves, as well as between them and the EU"); EP Baltic Sea Resolution, *supra* note 145, at 216 (emphasizing that "supporting regional cooperation has a multiplier effect on the scope and effectiveness of Union programmes"); *EU Launches New Action Plan*, EIS EURO-EAST REP., *supra* note 57, December 10, 1996 (Action Plan for Ukraine aims to help regional cooperation, including encouraging Ukraine's accession to CEFTA and strengthening Black Sea Economic Cooperation).

It is interesting to note that the EC is promoting subregional cooperation in other places as well. See generally COM(95)219 final, reported in BULL. EUR. UNION, June 1995, point 1.4.44 (Commission report on EC support for regional economic integration efforts among developing countries); EP Resolution on the Commission Communication on EC Support for Regional Economic Integration Efforts Among Developing Countries, 1997 O.J. (C 132) 316. In the Middle East, for example, the Commission has stated that that subregional cooperation, in view of "the importance of economic integration and the development of interdependence between various parties in promoting political stability" would "help make the peace process irreversible" and "reduce the disparities between the countries concerned." Commission Communication to the Council on Future Relations and Cooperation Between the Community and the Middle East, COM(93)375 final, reported in BULL. EUR. COMMUNITIES, Sept. 1993, point 1.3.18. More concretely, the Commission suggested "that these countries adopt habits of cooperation leading to the development of appropriate institutions and a free trade area in the region." *Id.* See also Commission Communication of 8 March 1995 to the Council

be necessary to strike a balance between the optimal and the possible. However, this complex strategy often vexes the associated countries, which are especially eager to be treated as autonomous, sovereign states, and thus resent being forced into a collective.¹⁵⁷

Another feature of the EU's association strategy is the gradual differentiation of agreement types. While the EA format has been nearly constant,¹⁵⁸ the PCA format has continued to evolve in order to

and the EP on Strengthening the Mediterranean Policy of the European Union: Proposals for Establishing a Euro-Mediterranean Partnership, COM(95)72 final, *reported in* BULL. EUR. UNION, Mar. 1995, point 1.4.57 ("Support for regional integration will be based on a major integration drive among the Mediterranean countries themselves and the improvement of communication and cooperation links between border regions . . . Thus, the association agreements concluded with the Community should be followed by similar agreements on free trade and cooperation among the countries concerned. The Community will support this process by providing assistance and encouragement as appropriate for the creation of regional cooperation structures and by providing financial assistance . . . to finance the economic infrastructure that is essential if regional trade is to be stepped up, especially in the field of transport, communications and energy."); EU-Rio Group Ministerial Conference on Mar. 17, 1995, *reported in* BULL. EUR. UNION, Mar. 1995, point 1.4.86 (the ministers "welcomed the movement towards regional and subregional integration in Latin America, the Caribbean and Europe and reaffirmed their conviction that regional integration was a preferred route for securing political understanding, social and economic development, enhanced competitiveness and integration into the world economy" and "expressed their determination to intensify dialogue and cooperation between the European Union, the Rio Group, Central America, Mercosur and the Andean Pact"); Barcelona Declaration and Work Programme, Conclusions of the Euro-Mediterranean Conference held in Barcelona in Nov. 1995, BULL. EUR. UNION, Nov. 1995, point 2.3.1 [hereinafter Barcelona Declaration] (stating the objective to encourage "regional cooperation and integration" and affirming that "regional cooperation on a voluntary basis, particularly with a view to developing trade between the partners themselves, is a key factor in promoting the creation of a free-trade area").

¹⁵⁷ See, e.g., AGENCE EUR., May 1, 1997, at 19 (Macedonian Prime Minister Crvenkovski stated, upon signing PCA with EU, that his country "is open to all forms of cooperation and functional links but not those that involve a form of regionalisation or extortion [sic]" because Macedonia "does not wish [its] level of relations with the [EU] to depend upon [its] neighbours' political process, upon what they do, but upon what" Macedonia itself has done).

Ironically, it was the EC that insisted, throughout the 1970s and 1980s, that it be allowed to negotiate bilateral trade and cooperation treaties directly with the CEECs, while Mr. Brezhnev insisted that the CMEA act as intermediary and supervise the EC's negotiations with individual CMEA member states. The CMEA, unlike the EC, had no competence to sign international agreements and bind its member states. Attempts to establish a framework agreement between the EC and the CMEA were ongoing in the 1970s, but broke down in 1980. See Hartnell, *Long and Winding Road*, *supra* note 1, at 180. After Mr. Gorbachev came to power in 1995, the dialogue between the EC and CMEA resumed, and eventually led to the establishment of official relations between the EC and the CMEA. See Joint Declaration of 24 June 1988, 1988 O.J. (L 157) 35. The CMEA finally yielded to EC pressure and agreed to a "parallel approach" under which the EC would be allowed to conduct detailed trade negotiations with CMEA countries on a bilateral basis, within the framework established by the Joint Declaration. Hartnell, *Long and Winding Road*, *supra* note 1, at 182.

¹⁵⁸ The most significant change made in the standard EA format was the inclusion of the human rights conditionality clause. The agreements with Bulgaria and Romania were the first to include "an explicit reference to regard for democratic principles and human rights, which are seen as essential to the association." BULL. EUR. COMMUNITIES, May 1992, point 1.2.12. However, such provisions already appeared in earlier PCAs (e.g. with Albania and the Baltic States). On May 11, 1992, the Council adopted the following statement:

The Council stresses that respect for democratic principles and human rights, as defined in the Helsinki Final Act and the Charter of Paris for a new Europe, and the principles of the market economy are essential components of cooperation or association agreements between

accommodate both the demands and the special needs of second-tier CEECs that are not candidates for eventual accession to the EU.¹⁵⁹

The EU has made it clear that its global free-trade association strategy is designed to serve a variety of economic and political purposes. Economically, it is meant to open markets for EU exports¹⁶⁰ and to further the EU's general economic interests (including those pertaining to the sensitive nature of certain products).¹⁶¹ Politically, the EU is guided by the following principles when entering into such arrangements: its attachment to multilateralism; implementation of its political priorities; and the impact on European identity.¹⁶²

III. CRITIQUE OF VERTICAL INTEGRATION MODEL

A. INTRODUCTION

The EU's association strategy, analyzed below in greater detail, has gradually become more responsive to the needs articulated by the EA

the Community and its CSCE partners.

The Commission is requested to act accordingly to ensure that agreements to be concluded by the Community contain an appropriate mechanism which is operational in emergencies, including provisions relating to non-fulfillment of obligations.

In the context of a political dialogue with the . . . countries of Central and Eastern Europe, the Community and its Member States will inform their partners of the importance they attach to the principles referred to above.

BULL. EUR. COMMUNITIES, May 1992, point 1.2.13. *See also* AGENCE EUR., May 29-30, 1995, at 3 (General Affairs Council adopted uniform clause allowing the EU "to suspend agreements concluded with third countries as soon as these countries violate human rights . . . [and] for market economy principles . . ." and an interpretative declaration pertaining thereto).

While the original EA between the EC and Czechoslovakia did not contain a human rights clause, each of the renegotiated EAs (following the break-up of that country) does. BULL. EUR. COMMUNITIES, Oct. 1993, point 1.3.14. The EP invoked this clause in its Dec. 12, 1996 resolution warning Slovakia that its EA "could be canceled and visa requirements renewed if [Slovakia] does not follow general democratic standards." OMRI, *supra* note 13, Dec. 13, 1996 (pertaining to the case of Deputy Gaulieder who was stripped of his mandate).

A further innovation may be found in the EAs with the Baltic States, which contain a new heading on cooperation in crime prevention. BULL. EUR. UNION, June 1995, point 1.4.63. *See generally* text accompanying *infra* note 228.

¹⁵⁹ *See* Commission Annotated Summary, *supra* note 66, at 4; AGENCE EUR., June 14, 1995, at 6 (seek formulas adapted to the specific situations of [the Transcaucasus] countries").

¹⁶⁰ Commission Communication of 14 February 1996 to the Council, European Parliament, ECOSOC and Committee of the Regions on The Global Challenge of International Trade: A Market Access Strategy for the EU, COM(96)53 final, *reported in* BULL. EUR. UNION, Jan.-Feb. 1996, point 1.4.25, and *reprinted in* AGENCE EUR. DOCS., Feb. 21, 1996 [hereinafter Commission Market Access Strategy]; ECOSOC Opinion, BULL. EUR. UNION, Oct. 1996, point 1.4.20. *See also* AGENCE EUR., Aug. 30, 1997, at 5 (report of the Special Article 113 Committee on practical implementation of the EU's "offensive" trade strategy launched in Feb. 1996).

¹⁶¹ AGENCE EUR., June 10, 1995, at 8 (agenda for General Affairs Council of June 12, 1995).

¹⁶² *Id.*

countries.¹⁶³ Still, it is hard to belie the impression that the EU is diligently superimposing its technocratic regime on some of its neighbors in Central and Eastern Europe. This can easily be verified by comparing the association agreements (and especially the EAs) with the EC Treaty itself, which serves as a template for the various types of association agreement. EAs (and, to a lesser degree, PCAs) are structurally similar to and contain many provisions identical to those found in the EC Treaty,¹⁶⁴ although the association agreements are both narrower in scope and shallower than the EC Treaty. The differences between them provide a valuable set of markers for the imbalance of rights and obligations.

Before hastening to criticize the EU for assuming a neocolonial posture towards its neighbors, one must ascertain what part of the responsibility for the current imbalances in the East-West relationship rests with the CEECs themselves.¹⁶⁵ It is fair to say that the EA countries have harbored unrealistic expectations of their relations with the EU, and consequently have been willing to follow the EU's agenda, even when doing so was contrary to their own best interests.¹⁶⁶ In fact, the EA countries have already "given up the store" as a consequence of their early trusting behavior. The EAs, despite their many advantages:

paradoxically . . . seriously weakened the [EA countries'] bargaining position, because the main and perhaps only relevant asset that [the EA countries] were able to offer was free access for EU exporters to domestic CEEC markets.¹⁶⁷

The changing dynamics of East-West European integration can be partly

¹⁶³ See Hartnell, *Long and Winding Road*, *supra* note 1, at 199-209, and Hartnell, *Association Agreements*, *supra* note 1, at 230-35, for a discussion of the early stages of this process.

¹⁶⁴ Thus, for example, the EA provisions concerning movement of goods are virtually identical to the corresponding provisions in the EC Treaty. In addition, the EA countries must adopt rules nearly identical to the EC's rules governing anti-competitive behavior. See examples cited *supra* in notes 53-54 and 56.

It should be noted, however, that identical language does not always lead to identical interpretation by the European Court of Justice. See Case 270/80, *Polydor Ltd. v. Harlequin Record Shops Ltd.*, 1982 E.C.R. 329 (provisions in EC-Portuguese free trade agreement interpreted differently from corresponding articles of EC Treaty — articles 30 and 36 — since objectives of free trade agreement are not the same as those of common market). The role of ECJ case law in the context of association agreements with CEECs has not been clearly addressed.

¹⁶⁵ See, e.g., Kennedy & Webb, *supra* note 1, at 1116 ("[I]n contrast to some EFTA countries whose complex response to integration with the EC has been developed over many years of internal political debate, each country has largely accepted the EC's framework for institutional relations.").

¹⁶⁶ "Some unreasonable hopes in the emerging democracies are going to be frustrated, which may turn into a bitter and possibly aggressive response." Wojtek Lamentowicz, *National Interests and Prospects for Integration*, in *THE INTERNATIONAL SYSTEM AFTER THE COLLAPSE OF THE EAST-WEST ORDER* 383, 383 (Armand Clesse et al. eds. 1994).

¹⁶⁷ Bárta & Richter, *supra* note 1, at 24. See discussion *infra* in notes 492-500 and accompanying text.

understood as a function of altered appraisals as to what is in the short- and long-term interest of the EA countries. Post-1989, people in Central and Eastern Europe were quite willing to make short-term sacrifices *vis-à-vis* the EU, because they believed that these sacrifices would lead to quick accession. With the passage of time, however, it has become increasingly apparent that accession will neither be quick, nor will it necessarily provide a panacea for existing problems.¹⁶⁸ The stick holding up the carrot of membership grows ever longer, and the carrot looks smaller across the greater distance.¹⁶⁹ It thus should come as no surprise that the motivational force created by this arrangement has become attenuated, and that the Central/East European donkey -- hitched up to pull the cart of economic growth -- has been getting some ideas of its own.

Central and East European countries, and particularly those which have concluded EAs with the EU, are showing signs of reorientation. They know that the current vertical East-West European integration model is imbalanced in the EU's favor, but have discovered that they are not powerless to change (or at least influence) direction. Some of their steps are explored in Part IV below.

The imbalance is undergoing a welcome correction. Full appreciation of the changes in Central and East European countries, however, presupposes a deeper understanding of the tensions in their relations with the EU and with each other. Five paradoxes beset the current vertical integration model: the trade paradox, the aspirational paradox, the participation paradox, the sovereignty paradox, and the competition-cooperation paradox. These paradoxes illustrate various axes along which

¹⁶⁸ See generally Peter Bugge, *Home at last? Czech views of joining the EU 3* (1997) (unpublished manuscript on file with author) (noting the "realism or even 'disillusionment' that has spread in Czech media and political circles in recent years as hopes of a fast and warm embrace into western European institutions have withered"); Kolankiewicz, *supra* note 2, at 478 ("entry into the EU for the Visegrad countries is now neither as imminent nor as certain, nor is popular support for the European idea as strong as formerly"). See also *infra* notes 182 and 268.

¹⁶⁹ It is virtually certain that the carrot will shrink in real terms. Consider, for example, the persistent references to the need to reform the Common Agricultural Policy (CAP) and the Structural Funds before accepting new members from Central and Eastern Europe, *infra* notes 234-35. In its CEEC Agricultural Study, *supra* note 29, the Commission estimates that enlargement would "add a further ECU 9 billion to an unchanged CAP by the year 2000 if all ten . . . [EA countries] joined the EU and ECU 12 billion by 2010 (compared to ECU 42 billion for the current 15 member Union)" and "stresses the need for the CAP to adapt in time to the future changes brought about by enlargement to the East." See also Báta & Richter, *supra* note 1, at 32 ("[E]nlargement . . . is unlikely under the prevailing 'rules of the game'. Precondition . . . will be either a far reaching reform of the EU redistribution system which will then provide much less immediate advantages to new entrants than they hope for, or, the present rules will, for incumbents, prevail but new entrants will have to accept unprecedented unfavourable derogations in order to keep the EU's budget drain within acceptable limits. In both cases actual gains after accession will be substantially smaller than they are thought to be today."). But see Ana Nicholls, *Subsidised Subsistence*, BUS. CENT. EUR., Feb. 1997, at 29 ("If EU membership is to mean anything, some elements of the [CAP] will have to be extended to Central Europe . . .").

EU and CEEC interests can be measured, and offer a framework for understanding the forces working for and against European integration.

B. THE FIVE PARADOXES

1. The Trade Paradox

On the surface one can perceive a common interest -- shared by both the EU and the associated countries -- in increasing their bilateral trade. But, behind this apparent congruence of interest lies an incongruity: The desire for more trade can be translated into each country's unilateral wish to expand its exports to the other's market. CEEC countries, many of which have high external debt, are striving to achieve a positive balance of trade.

For its part, the EU has constructed an extraordinarily intricate network of external trade treaties, including those with the CEECs.¹⁷⁰ The

¹⁷⁰ A full exposition of the EU's complex external relations is beyond the scope of this article. However, it is worth noting that the EC has entered into various types of association agreements with countries in Africa, Asia, and Latin America. Most of these agreements are of the PCA type. *See, e.g.*, Cooperation Agreement Between the EC and the Yemen Arab Republic, *amended on* Mar. 6, 1995, 1995 O.J. (L 26) 1; Cooperation Agreement Between the EC and the Republic of India on Partnership and Development, 1994 O.J. (L 223) 23; Draft Framework Trade and Cooperation Agreement with Korea, *reported in* BULL. EUR. UNION, Mar. 1995, point 1.4.81; Framework Cooperation Agreement of 17 July 1995 Between the EC and Viet Nam, *reported in* BULL. EUR. UNION, July-Aug. 1995, point 1.4.100; Economic Partnership and Political Consultation Agreement Between the EC and Mexico, BULL. EUR. UNION, Oct. 1995, point 1.4.109, *initialed on* July 23, 1997, AGENCE EUR., July 24, 1997, at 9; Framework Cooperation Agreement of 21 June 1996 Between the EC and Chile, *reported in* BULL. EUR. UNION, June 1996, point 1.4.105.

The EC has developed a special Euro-Mediterranean type of association agreement which has far-reaching provisions like the EAs but does not contemplate eventual accession of the associated country. *See* Euro-Mediterranean Agreement Between the EC and Egypt, *reported in* BULL. EUR. COMMUNITIES, Dec. 1994, point 1.3.67; Euro-Mediterranean Association Agreement Between the EC and Israel, *reported in* BULL. EUR. UNION, Nov. 1995, point 1.4.69; Euro-Mediterranean Agreement Between the EC and Jordan, *reported in* BULL. EUR. UNION, May 1995, point 1.4.75; Euro-Mediterranean Agreement Between the EC and Tunisia, *reported in* BULL. EUR. UNION, July-Aug. 1995, point 1.4.84; Euro-Mediterranean Agreement Between the EC and Morocco, *reported in* BULL. EUR. UNION, Jan.-Feb. 1996, point 1.4.114; Euro-Mediterranean Agreement Between the EC and the PLO, 1997 O.J. (L 187) 1. The Euro-Mediterranean Conference held in Barcelona in November 1995 adopted a work program that called for the progressive establishment of a free-trade area. BULL. EUR. UNION, Nov. 1995, points 1.4.56 and 2.3.1. *See also* EP Resolution on Economic and Trade Relations Between the EU and the Countries of the Mediterranean Basin, 1995 O.J. (C 323) 159.

However, some of the EC's bilateral association agreements with countries outside Europe and the Mediterranean area surpass the PCA structure. For example, the Commission proposed to convert the PCA that the EC was already in the process of negotiating with South Africa into a free trade agreement. BULL. EUR. UNION, Oct. 1995, point 1.4.126. Negotiations are still underway, and both parties remain committed to the conclusion of a free trade agreement. The proliferation of free trade agreements, and particularly the proposal to conclude a free trade agreement with South Africa, set off a storm of controversy within the EU. *See* AGENCE EUR., June 14, 1995, at 9 (Commission Communication on Free Trade Areas); AGENCE EUR., Jan. 31, 1996, at 6-7 (Commission must present studies on the compatibility of such a free trade agreement with WTO rules and its impact on the Common Agricultural Policy). *See also* AGENCE EUR., Feb. 16, 1996, at 11 ("It is not possible [for the EU] to go in all four cardinal directions at once" and predicting a "big bang in trade that will entail a big social crunch").

reasons behind the EU external trade policies are many and complex, and the agreements with those few associated countries that enjoy the prospect of future accession to the EU are unique. Overall, however, the EU's entire network of external trade treaties manifests the Commission's policy of using free trade agreements as tools to promote market access for EU exporters.¹⁷¹ This is equally, if not especially true, in the case of the CEECs.¹⁷² Thus, the mutual desire to increase bilateral trade may be viewed as a zero-sum game.

The free trade provisions of the EAs illustrate this partially incompatible set of urges. At first, the EAs were touted for the asymmetric nature of their transitional provisions. On paper, the EAs require the EU to open up its market to imports from each EA country faster than the associated country must open up to imports from the EU.¹⁷³ This paper sacrifice, however, masked a structural imbalance. The EA regime inherently favors the EU, since it provides for unlimited trade of industrial goods, which the EU tends to export. Simultaneously, the EAs restrict trade of sensitive goods, such as agricultural products, textiles, coal and steel, which EA countries wish to export to the EU.¹⁷⁴ Thus, implementation of the EAs tended to be accompanied by a dramatic rise in EU exports to the EA countries, without an offsetting rise in EU imports from Central and Eastern Europe.¹⁷⁵ According to former Polish Prime Minister Olesky, "the

The EC has also concluded customs union agreements with a very few countries, e.g. Malta and Turkey. *See infra* notes 192 and 194. In addition, it has concluded the Agreement of 2 May 1992 on the European Economic Area [hereinafter EEA Agreement] (current members of the EEA are Iceland, Liechtenstein and Norway).

Last but not least is the trend towards conclusion of interregional agreements. *See, e.g.*, Framework Cooperation Agreement Between the European Community and the Countries Party to the General Treaty on Central American Economic Integration (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua) and Panama, *reported in* BULL. EUR. COMMUNITIES, July-Aug. 1993, point 1.3.49; Interregional Agreement on Commercial and Economic Cooperation Between the European Community and MERCOSUR, *reported in* BULL. EUR. UNION, Dec. 1995, point 1.4.111.

¹⁷¹ Commission Market Access Strategy, *supra* note 160.

¹⁷² *See, e.g.*, Bárta & Richter, *supra* note 1, at 11 (noting that "this real world trade asymmetry, accompanied by stubborn ongoing EU resistance to competing CEECs' exports . . . combined with the relatively low level of foreign direct investment flowing into CEECs seem to indicate that the main interest of the EU lies in market expansion rather than in a long-term industrial cooperation").

¹⁷³ *See* discussion in Hartnell, *Long and Winding Road*, *supra* note 1 at 187-189. Thus, the EAs are premised on the idea that "free access to western markets is one of the basic preconditions for vigorous and sustainable growth of the CEECs." Bárta & Richter, *supra* note 1, at 13.

¹⁷⁴ *See, e.g.*, Vachudova, *supra* note 127, at 47 ("Owing to the provisions of the [EAs], which protect sensitive sectors in the [EC], exports to the Visegrad group are [in 1993] growing faster than the group's exports to the [EC]"); Andrzej Skowronski, BUS. CENT. EUR., Dec. 1996, at 22 (according to a leading Polish industrialist, "[t]he opening of Western Europe to Central and East European companies . . . was theoretical rather than real. In some ways, Western Europe was more open before 1989 than afterwards. With the fall of communism, the ideal of broad co-operation and a common Europe without an East-West divide took a back seat to the priority of limiting competition.").

¹⁷⁵ In 1994 and 1995, the first six CEECs (i.e. Bulgaria, Czech Republic, Hungary, Poland, Romania and Slovakia) "converted from being net exporters of agricultural products to net importers." Bárta & Richter, *supra* note 1, at 7. Further, "EU exports to [these] countries increased by 102.8 percent

European Commission did not take into consideration our postulates to base commodity exchange on mutually beneficial terms. The Union is taking advantage of its economic potential . . ."¹⁷⁶

2. The Aspirational Paradox

The contradictions inherent in the aspirations of the EU and EA countries exist at two different levels. The first level of inquiry is whether East-West union is truly a shared goal. Second, even if that goal is a shared one, there are incongruent notions as to when and why union should occur.

As for the mutuality of the goal itself, much was made early on in the association process of the fact that the EAs themselves merely *acknowledged* that membership was the ultimate goal of the associated countries.¹⁷⁷ This glaring imbalance was formally rectified in June 1993, when the Copenhagen European Council established "the objectives of membership" and affirmed that "the associated countries in Central and Eastern Europe that so desire shall become members" of the EU.¹⁷⁸ All EA countries have formally applied for membership since 1993. In particular

during 1990-1993, [while EU] imports in fact declined by 8 percent." *Id.* The EU's balance of trade with these countries went from a deficit of nearly 1 billion ECU in 1990, to a surplus of 451 million in 1993. *Id.* From the CEEC perspective, "total imports from the EU increased by 114 percent during 1990-1993, while total exports . . . to the EU increased by 55 percent during the same period. While the expansion of EU imports was substantially promoted by rather liberal trade regimes in the CEECs, the similar expansion of CEECs' exports was effectively undermined by maintenance of import barriers, especially in case of 'sensitive' items which constitute the main 'hope' of CEECs' export industries." *Id.* at 11. See also HUNG. REP., *supra* note 41, No. 1.02, April 9, 1995 (Hungarian and Polish agricultural ministers attack EU protectionism); Jacek Saryusz-Wolski, *Eastern Enlargement - What Economics Can Tell Us* at 2 (1996) (unpublished manuscript on file with author) (Polish agricultural trade with EU went from \$861 million surplus in 1990 to \$111 million deficit in 1995, "due mostly to the decrease in Polish exports to the EU, despite the presumed asymmetry stipulated" by the EA); Skowronski, *supra* note 174 ("sudden and one-sided opening of the Polish economy and market to foreign competition"); RFE/RL NEWSLINE, *supra* note 41, May 6, 1997 (Slovak Agriculture Minister Baco called EU agricultural trade policy towards EA countries "shameful").

Other factors contributed to these negative trade results, including the post-1989 shopping spree mentality in Central and Eastern Europe. See, e.g., Robert Frank, *Poland's Trade Gap Widens, Fed by Buying Frenzy*, WALL ST. J., Sept. 29, 1997, at A18. However, the structural imbalance has persisted, even after the reckless optimism faded. But see RFE/RL NEWSLINE, *supra* note 41, Dec. 11, 1997 (Hungary achieved "unprecedented" trade surplus with EU during first ten months of 1997).

¹⁷⁶ Statement of Prime Minister Olesky, Polish Government Website, <<http://plwww.fuw.edu.pl/eng/category/government>> [hereinafter Polish Gov't Website].

¹⁷⁷ The preamble of each EA acknowledges that "the final objective [of each associated country] is to become a member of the Community." See also BULL. EUR. COMMUNITIES, Oct. 1992, point 1.4.6 (joint statement issued at the close of the first official meeting of the foreign ministers of the EC and Visegrád countries "stating their belief that the [EAs] would help the Visegrád countries to attain their ultimate goal"). The Visegrád countries bemoaned the EU's apparent lack of reciprocity *vis-à-vis* this goal in the early 1990s. See generally Hartnell, *Long and Winding Road*, *supra* note 1, at 199.

¹⁷⁸ Copenhagen Summit Conclusions, *supra* note 31, at point 1.13. The Commission Communication on Closer Association, *supra* note 29, recommended that the European Council " . . . confirm that it accepts the goal of eventual membership in the [EU] for the [CEECs] when they are able to satisfy the conditions required."

the Structured Dialogue,¹⁷⁹ Pre-accession Strategy,¹⁸⁰ and CEEC White Paper¹⁸¹ manifest the EU's ongoing commitment to this goal.

At this point in time, there is formal agreement -- at least at the governmental level -- that East-West union is a shared goal.¹⁸² There is also a perception that some of the EA countries will in fact become members after the year 2000.¹⁸³ Yet once more, the apparent congruities mask deep

¹⁷⁹ See *infra* text accompanying notes 257-63.

¹⁸⁰ See *supra* note 29.

¹⁸¹ *Id.*

¹⁸² The seventh issue of Eurobarometer devoted to opinions in the Central and Eastern European countries shows *inter alia* that decision-makers and opinion formers have a more positive image about the EU than ordinary citizens (80% vs. 49%), and also place higher value on the state of EU relations with their country (78% vs. 37%). Romania (80%) and Poland (70%) place the highest value on EU membership, and also have the most positive image of the EU (65% and 58% respectively). "The image of the EU has improved [*vis-à-vis* earlier Eurobarometer polls] in Bulgaria, Romania and Poland, declined in the Czech Republic, and is stable in Hungary, Slovakia and Slovenia." *Eurobarometer, in TOGETHER IN EUR.*, No. 107, Apr. 15, 1997. On the whole, this issue of Eurobarometer "shows that people have revised their thoughts in the past year." *EUR. DIALOGUE, supra* note 41 (May/June 1997). In the Baltic States there has been a significant drop in the number of citizens who would vote for EU membership. *Id.* See also OMRI, *supra* note 13, Mar. 28, 1997 (poll of Hungarian agricultural workers shows drop of support for EU accession from 40% to 12%).

Compare *EUROPINION Results, in TOGETHER IN EUR.*, No. 106, Apr. 1, 1997 (surveys of EU citizens reveal that "61% of the respondents believe that EU enlargement would be a good thing - 76% in Greece, 75% in Italy, 71% in Ireland and 69% in the Netherlands. However, despite their governments' support for enlargement, this percentage is only 57% in Germany, 55% in the United Kingdom and 51% in Austria."). These same surveys also reveal that "the number of [EU citizens] who regard EU membership as a 'good thing' fell in the last few months of 1996 to reach an all-time low of 55%." *Id.*

¹⁸³ There has been considerable dispute over whether the EA countries would all commence accession negotiations at the same time, or whether some would manage to leap ahead of others. See *infra* notes 196-215 and accompanying text. Initial estimates of accession by the year 2000 have gradually been revised. See, e.g., Lionel Barber, *Brussels Sees East European Nations in EU from 2002*, *FIN. TIMES*, June 17, 1996; HUNG. REP., *supra* note 41, No. 2.15, Sept. 30, 1996 (head of Hungarian Foreign Minister's secretariat for integration affairs Somogyi said "negotiations could be wound up around 2000, followed by a ratification period of one or two years, so Hungary cannot expect full membership before 2000"); *REUTERS Week, WARSAW BUS. J.*, Sept. 16-22, 1996, at 1 (Commission spokesman said "[r]ealistically it cannot take place sooner than 2002"). See also *Of Hype and Halos, BUS. CENT. EUR.*, Feb. 1997, at 37 (Poland's "goal of EU membership -- set, rather optimistically, for 2000"); *Long Sprint, BUS. CENT. EUR.*, Feb. 1997, at 38 ("by 2002 a real possibility").

Slovakia has been continually criticized for lack of democratic reforms, and its eligibility to begin accession negotiations has been called repeatedly into question. In one incident, a Slovak official reacted angrily to a statement by the Polish President (made during a visit to Hungary) that Slovakia would "gain EU membership later than the other Visegrád countries because of its domestic political situation." OMRI, *supra* note 13, Feb. 21, 1996. According to the Slovak spokesman, Slovakia could join at the same time as the Czech Republic, Hungary and Poland; Slovakia "does not consider the process of integration into EU structures as a race" and "does not . . . publicly evaluate difficulties its neighbors are experiencing in the transformation process." *Id.* Slovakia's isolation has continued to grow. Commissioner van den Broek reassured Slovakia that its "enormous economic potential" would make it a "front-runner among the candidates for accession, on condition that it also meets the political and democratic criteria," *Association Councils, supra* note 136, but also warned Slovakia that it must send out "positive signals" and take "practical steps" if it wanted to be invited to expansion talks expected to be decided by the Luxembourg European Council in December 1997. *RFE/RL NEWSLINE, supra* note 41, May 30, 1997. In June 1997, EP deputies "warned that Slovakia stood little chance of joining the EU," *RFE/RL NEWSLINE, supra* note 41, June 18, 1997, and insisted that it "must implement specific changes in domestic policy" by November or be excluded when accession negotiations begin

divisions over the prospects for enlargement of the EU. The discrepancy, which first manifested itself as a disagreement over timing, reflects a fundamental difference of opinion as to the rationale for enlargement. The EU tends to hold out the prospect of membership as a reward for successful transition, whereas the EA countries view membership as the key to successful transition.¹⁸⁴ In other words, the EU says that the EA countries may join when they are ready to be full members,¹⁸⁵ while the EA countries consider full membership necessary in order to achieve that readiness. This dilemma epitomizes the true distance between East and West.¹⁸⁶

The EA countries have pushed consistently for a firm commitment from the EU as to when accession negotiations would begin.¹⁸⁷ The EU, for its part, made clear that no enlargement would be undertaken until after conclusion of the Intergovernmental Conference (IGC).¹⁸⁸ Ultimately, the

with other EA countries. RFE/RL NEWSLINE, *supra* note 41, June 19, 1997. A Slovak representative responded that political tension in the country "is typical of any country before elections" (scheduled for September 1997), RFE/RL NEWSLINE, *supra* note 41, June 17, 1997, while Slovak Prime Minister Meciar acknowledged that his country's accession to the EU would be "postponed," as was its entry to NATO. RFE/RL NEWSLINE, *supra* note 41, July 3, 1997. The Commission did not recommend commencing accession negotiations with Slovakia. *See infra* note 206. "The Slovak parliament unanimously adopted a declaration that the current political troubles were of a 'temporary nature' and that Slovakia would take all necessary measures to remedy this Then, the Government published a 'non-paper' calling for accession negotiations to begin simultaneously with all [CEEC] candidates." AGENCE EUR., Oct. 24, 1997, at 4.

¹⁸⁴ From the standpoint of the EA countries, the economic reasons for seeking membership include: increased exports to EC (via free access for both industrial and agricultural goods, elimination of anti-dumping rules and safeguard measures against CEEC products, and decreased transaction costs due to elimination of formalities); increased inward investment (i.e. since CEECs would be more attractive owing to enhanced access to EC market); and net transfers of funds (e.g. from CAP & structural funds). Bárta & Richter, *supra* note 1, at 18-20.

¹⁸⁵ Copenhagen Summit Conclusions, *supra* note 31.

¹⁸⁶ Kennedy, *supra* note 1, at 379 (this is the "darker side" to enlargement "in which relaxation of Western hesitance about allowing the East 'in' seems only possible once the conditions of chronic inequality have been stabilized").

¹⁸⁷ This started with the Visegrád Memorandum, *supra* note 130, and continued unabated until the decision was taken. A variety of reasons have been given for this obsession with fixing the time schedule. Certainly it would be useful inasmuch as it would provide "a clear signal and a visible target" for the applicant countries. Bárta & Richter, *supra* note 1, at 15. This was especially acute during the early years of transition, when applicant countries were in the early stages of painful economic restructuring, and when CEEC governments had more urgent need to justify their policies to their electorates, but is still a sensitive issue among the EA countries. Compare Nathaniel Nash, *Europe Group Sets Timetable For Nations Seeking Entry*, N.Y. TIMES, Dec. 17, 1995, at 4 ("Eastern European leaders had asked for a commitment on timing so that they could go back and tell their constituents that the austerity measures many had instituted had not been in vain."); with Statement by Polish Prime Minister Cimoszewicz, *Polish Prime Minister in Brussels*, in TOGETHER IN EUR., No. 104, Mar. 1, 1997 (expressing confidence that the Commission's opinion on Polish accession will "give us good marks" for the country's political, legal and economic reforms).

¹⁸⁸ The IGC was convened in March 1996 to review progress under the (Maastricht) Treaty on European Union and to propose further changes to the EU, including whatever changes might be needed in order to enable enlargement to proceed. The Reflection Group charged with preparing the IGC first met in Taormina on June 3, 1995. AGENCE EUR., June 2, 1995, at 2. *See* Final Report of the Reflection Group Set Up to Prepare for the IGC, *reported in* BULL. EUR. UNION, Dec. 1995, points 1.97-111 and 1.9.2; Commission Opinion on Reinforcing Political Union and Preparing for Enlargement, *reported*

EA countries managed to extract a series of promises that accession negotiations would begin within a certain period of time after conclusion of the IGC.¹⁸⁹ However, these commitments turned out to be moving targets, in part because the IGC was not concluded on schedule,¹⁹⁰ and in part because the EU repeatedly postponed the commencement of enlargement negotiations.¹⁹¹ The EU also had prior commitments to other non-CEEC

in BULL. EUR. UNION, Jan.-Feb. 1996, points 1.1 and 2.2.1 [hereinafter Commission Opinion on Political Union and Enlargement] (Commission argues that the EU cannot commit itself to enlargement without making sure that changes are first made to the ways and means of its operation and emphasizes the importance of: bringing Europe closer to its citizens, making Europe's presence felt in the world, and adopting an institutional system which will work well in an expanded Europe).

The IGC -- "dubbed 'Maastricht Two' by no less a fervent federalist than German Chancellor . . . Kohl . . . floundered throughout its 14 months of existence, making no perceptible substantial progress." Joel Blocker, *EU: Tomorrow's [Noordwijk] Summit Critical For Eastward Expansion*, ARMENIAN NEWS NETWORK, (May 22, 1997) <groong@usc.edu> [hereinafter Blocker]. The IGC was concluded at the European Council's Amsterdam Summit in June 1997. See Conclusions of the Presidency (Amsterdam European Council, June 1997), reprinted in BULL. EUR. UNION, June 1997, points 1.1-.31 [hereinafter Amsterdam Summit Conclusions].

¹⁸⁹ "Clashes about the timing of the next wave of enlargement have taken on something of a ritual nature." *Enlargement: The Timing is What Matters*, in TOGETHER IN EUR., No. 102, Feb. 1, 1997. Against the Commission's recommendation "that it would be premature at this stage to set a timetable for accession or for the beginning of negotiations," Enlargement Interim Report, *supra* note 29, the European Council at its Madrid Summit promised to start enlargement negotiations for Cyprus and Malta six months after the end of the IGC. Conclusions of the Presidency (Madrid European Council, December 1995), reprinted in BULL. EUR. UNION, Dec. 1995, points 1.1-.102, at point 1.25 [hereinafter Madrid Summit Conclusions]. See also Conclusions of the Presidency (Florence European Council, June 1996), reprinted in BULL. EUR. UNION, June 1996, Points 1.1-.37, at point 1.9 (urging Commission to produce needed reports so that "the initial phase of negotiations with [CEECs] can coincide with the beginning of negotiations with Cyprus and Malta . . ."). See further Nash, *supra* note 187 (the "15 leaders agreed to begin formal negotiations . . . by the end of 1997"). This timetable was repeatedly confirmed. See, e.g., Statement by Commission President Jacques Santer, AGENCE EUR., Jan., 24, 1996, at 11 (Commission will present its opinion on all applications for membership shortly after completion of the IGC, and negotiations can begin six 6 months thereafter); *Standing Conference on Enlargement*, in TOGETHER IN EUR., No. 106, Apr. 1, 1997 [hereinafter *Standing Conference on Enlargement*] (EU foreign affairs ministers, meeting in Apeldoorn in March 1997, reiterated their intention to stick to this scenario).

¹⁹⁰ The European Council should have wrapped up the IGC at its Dec. 1996 Dublin Summit, according to the timeframe set by the TEU. However, the Dublin Summit was preoccupied with problems surrounding monetary union; its major accomplishment was to reach agreement on the main elements of the Stability and Growth Pact. Conclusions of the Presidency (Dublin European Council, December 1996), reprinted in BULL. EUR. UNION, Dec. 1996, points 1.1-.38 [hereinafter 1996 Dublin Summit Conclusions]. See also *Summit Marks Peaks and Troughs*, EIS EURO-EAST REP., *supra* note 57, Dec.10, 1996 (noting that for the EA countries, "the most urgent matter is progress with the accession strategy, and the signals on this are still not encouraging. Delay and uncertainty continue to dog the [IGC], which should produce the master-design for the new [EU] into which new members can merge"). Thus, conclusion of the IGC was postponed until the Amsterdam Summit in June 1997. See Amsterdam Summit Conclusions, *supra* note 188 ("The European Council meeting in Amsterdam on 16 and 17 June 1997 successfully concluded the IGC with full agreement on a draft Treaty. This opens the way for the launching of the enlargement process in accordance with the conclusions of the Madrid European Council.").

¹⁹¹ Promises made to the EA countries regarding the timetable for accession negotiations have been inconsistent over time. Original predictions (i.e. within 6 months after conclusion of the IGC) were subsequently revised; see Statement by Commission President Santer, OMRI, *supra* note 13, Apr. 5, 1996 (negotiations "could begin in early 1998"); OMRI, *supra* note 13, June 18, 1997 ("Poland is receiving signals that accession talks may not begin until April or May 1998" and not in "January as

applicants -- Turkey,¹⁹² Cyprus,¹⁹³ and Malta¹⁹⁴ -- each of which had applied

originally scheduled").

¹⁹² Turkey has been associated with the Community since the effective date of the EEC-Turkey Association Agreement. 1964 O.J. (L 217). It applied for accession on Apr. 14, 1987, but has been "given to understand that its membership is in the distant future." *Enlargement Outlook*, in TOGETHER IN EUR., No. 107, Apr. 15, 1997 [hereinafter *Enlargement Outlook*]. The Commission gave a negative opinion on Turkish accession in 1989. BULL. EUR. COMMUNITIES, Dec. 1989, point 2.2.37. In the meantime, Turkey expressed "fear that relations between the Community and the countries of Central and Eastern Europe might develop to the detriment of Turkey," and urged conclusion of a customs union with the EC. BULL. EUR. COMMUNITIES, May 1993, point 1.3.20. The EC-Turkey Association Council agreed on March 6, 1995, to finalize the customs union between the EC and Turkey. BULL. EUR. UNION, Mar. 1995, point 1.4.65. The EC-Turkey Customs Union Agreement was approved by the European Parliament on Dec. 13, 1995. OMRI, *supra* note 13, Dec. 13, 1995. It entered into effect on January 1, 1996. See Decision No. 1/95 of the EC-Turkey Association Council of 22 December 1995 on Implementing the Final Phase of the Customs Union, 1996 O.J. (L 35) 1. See also Decision No. 2197 of the EC-Turkey Association Council of 4 June 1997 Establishing the List of Community Instruments Relating to the Removal of Technical Barriers to Trade and the Conditions and Arrangement Governing their Implementation by Turkey, 1997 O.J. (L 191) 1. A free trade agreement for products covered by the ECSC Treaty (which products are not covered by the Customs Union Agreement) was concluded on July 25, 1996, and entered into effect on Aug. 1, 1996. BULL. EUR. UNION, July-Aug. 1996, point 1.4.101. Unhappy with its marginal position, Turkey threatened to block NATO enlargement plans unless the EU began to take its application to join seriously. EUR. DIALOGUE, *supra* note 41 (May/June 1997). See also ECOSOC Opinion on Enlargement, *supra* note 29 (recommending a "stepping-up of dialogue with the aim of ensuring that human rights were recognized irrevocably . . . , that a constitutional and democratic State was set up once and for all and that economic development was speeded up"). The EP has expressed ongoing concern with human rights violations in Turkey. See, e.g., Resolution of 22 April 1993 on the Problem of the Kurds in Turkey, 1993 O.J. (C 150) 262; Resolution of 15 July 1993 on the PKK Terrorist Campaign, 1993 O.J. (C 255) 148; Resolution of 16 February 1995 on the Draft Agreement on the Conclusion of a Customs Union Between the EU and Turkey, 1995 O.J. (C 56) 99.

¹⁹³ Agreement Establishing an Association Between the European Community and the Republic of Cyprus, 1973 O.J. (L 133) 2, as last amended by the Protocol on the Implementation of the Second [Customs Union] Stage of That Agreement, 1987 O.J. (L 393) 2. Cyprus applied for accession to the Community on July 3, 1990. BULL. EUR. COMMUNITIES, July-Aug. 1990, point 1.4.24. See Commission Opinion on Cyprus's Application for Membership, COM(93)313 final, reported in BULL. EUR. COMMUNITIES, June 1993, point 1.3.6 [hereinafter Commission Opinion on Cyprus]; Council Conclusions of 19 July 1993 on the Commission Opinions on the Applications for Membership by Cyprus and Malta, reported in BULL. EUR. COMMUNITIES, July-Aug. 1993, point 1.3.2; Council Conclusions of 4 October 1993 on the Commission Opinion on the Cypriot and Maltese Applications for Accession, reported in BULL. EUR. COMMUNITIES, Oct. 1993, point 1.3.7 (the Council "invited the Commission to open substantive discussions with the Government of Cyprus to help it to prepare for the accession negotiations, which would then follow under the best possible conditions"); Council Conclusions of 6 March 1995, reported in BULL. EUR. UNION, Mar. 1995, point 1.4.60a (agreeing on the general policy framework for the development of relations with Cyprus); EP Resolution of 12 July 1995 on Cyprus's Application for Membership of the EU, 1995 O.J. (C 249) 74. See also ECOSOC Opinion on Enlargement, *supra* note 29 (noting that "the problem posed by the partition of its territory should first be resolved"); AGENCE EUR., June 14, 1995, at 9; Protocol of Financial and Technical Cooperation Between the European Community and the Republic of Cyprus, 1995 O.J. (L 278) 23. During the June 1995 meeting of the Association Council, the EU extended the Structured Dialogue and Pre-accession Strategy format to Cyprus. BULL. EUR. UNION, June 1995, point 1.4.70; AGENCE EUR., June 12-13, 1995, at 6. See also Council Decision of 17 July 1995 on Detailed Procedures for the Structured Dialogue Between the EU and Cyprus, reported in BULL. EUR. UNION, July-Aug. 1995, point 1.4.72; Ministerial Meeting of 18 October 1995, reported in BULL. EUR. UNION, Oct. 1995, point 1.4.72 (Commissioner Monti suggested that the CEEC White Paper, *supra* note 29, "could . . . provide a useful point of departure for Cyprus"). Ultimately, the Commission did not recommend commencement of accession negotiations with Turkey, AGENCE EUR., July 12, 1997, at 4, although Turkey is still deemed eligible, despite concerns over "macroeconomic instability" and the need for "major improvements in

for accession ahead of the CEEC countries. At one time it appeared that the EU might make the CEEC applicant countries wait until after conclusion of accession negotiations with these prior applicants, but this danger has faded.¹⁹⁵

Within this timing debate lurked the even more troubling dilemma: Should the EU conduct accession negotiations with all applicant countries in parallel,¹⁹⁶ or single some out for earlier negotiations? Hungary,

the political situation" AGENCE EUR., July 17, 1997, at 4. See Commission Communication to the Council and EP on the Further Development of Relations with Turkey, COM(97)394 final.

¹⁹⁴ Agreement Establishing an Association Between the EEC and Malta, 1971 O.J. (L 61) 1. Malta applied for accession to the EU on July 16, 1990. BULL. EUR. COMMUNITIES, July-Aug. 1990, point 1.4.25. See Commission Opinion on Malta's Application for Membership, COM(93)312 final, reported in BULL. EUR. COMMUNITIES, June 1993, point 1.3.7 [hereinafter Commission Opinion on Malta]; Council Conclusions of 19 July 1993 on the Commission Opinions on the Applications for Membership by Cyprus and Malta, reported in BULL. EUR. COMMUNITIES, July-Aug. 1993, point 1.3.2; Council Conclusions of 4 October 1993 on the Commission Opinion on the Cypriot and Maltese Applications for Accession, reported in BULL. EUR. COMMUNITIES, Oct. 1993, point 1.3.8 (the Council "supported the Commission's approach, which was to propose to use all the instruments offered by the Association Agreement to help implement the structural reforms vital for the transition of Malta's economy towards integration into the European Union" and "invited the Commission to open an in-depth dialogue forthwith with the Maltese Government so as to define by common agreement the content of, and timetable for, the priority reforms to be implemented"); Commission Report of 1 March 1995 to the Council on the Implementation of Economic Reforms in Malta with a View to Reviewing Malta's Application for Accession to the European Union, reported in BULL. EUR. UNION, Mar. 1995, point 1.4.63 [hereinafter Commission Report on Malta]; Council Conclusions of 10 April 1995 on Malta, reported in BULL. EUR. UNION, Apr. 1995, point 1.4.72; EP Resolution of 12 July 1995 on Malta's Application for Membership of the EU, 1995 O.J. (C 249) 17. See also ECOSOC Opinion on Enlargement, *supra* note 29 (observing that "Malta's membership did not pose any serious problems, provided that institutional changes were brought about so as to take into account the need to balance the representation of Member States"); AGENCE EUR., June 14, 1995, at 9; Protocol of Financial and Technical Cooperation between the European Community and Malta, 1995 O.J. (L 278) 14. During the June 1995 meeting of the Association Council, the EU extended the Structured Dialogue and Pre-accession Strategy format to Malta. BULL. EUR. UNION, June 1995, point 1.4.72; Agence Eur., June 12-13, 1995, at 6. See also Council Decision of 17 July 1995 on the Detailed Procedures for the Structured Dialogue between the EU and Malta, reported in BULL. EUR. UNION, July-Aug. 1995, point 1.4.75. Malta withdrew its application to accede to the EU in Nov. 1996. BULL. EUR. UNION, Nov. 1996, point 1.4.79. The Council accordingly suspended the Structural Dialogue and Pre-accession Strategy. *Id.* See generally Speech by Maltese Minister Vella to the EU-Malta Joint Parliamentary Committee, Website of the Ministry of Foreign Affairs and the Environment <<http://www.medac.comnet.mt/mfanet/gvella/eu-malta.htm>>.

¹⁹⁵ Negotiations with Cyprus and Malta were scheduled to commence six months after conclusion of the IGC. See, e.g., Statement by General Affairs Council on 6 March 1995, reported in BULL. EUR. UNION, Mar. 1995, point 1.4.60a; BULL. EUR. UNION, June 1995, point 1.4.68 (Cannes European Council "confirmed that negotiations on the accession of Cyprus and Malta would begin six months after the conclusion of the 1996 [IGC]"). Negotiations with Malta were expected to proceed smoothly. AGENCE EUR., Feb. 10, 1996, at 2 (Malta's Prime Minister stated that Malta's waiting period has lasted long enough and that the accession negotiations "should not last more than six months . . . [since] Malta already fulfills the accession conditions."). Negotiations with Cyprus on the other hand, were more likely to encounter delays, since the political tensions there "continue to make it an emotive and controversial subject." EUR. DIALOGUE, *supra* note 41 (July/August 1997). However, "on a purely technical basis [Cyprus] has for the most part been accepted already." *Id.*

¹⁹⁶ *Enlargement Outlook*, *supra* note 192 ("All that is clear so far about the structure of the negotiations is that formally and juridically there will be eleven negotiations conducted in parallel.").

consistent with its perennial fear of being held back by its slower neighbors, continued to remind the EU that accession should be a bilateral and not a multilateral process.¹⁹⁷ The EU, for its part, attempted to tread carefully around this sensitive issue. However, its statements were inconsistent¹⁹⁸ and, in the end, its actions divisive.

Debate on this issue intensified during the period right before the Commission was due to present its opinions (*avis*) assessing the readiness of each of the current applicants.¹⁹⁹ Among the alternatives, the Commission focused on three: "proposing that negotiations open at the same time with all applicant countries, it being understood that they would then be held according to different timetables;" "proposing that negotiations open first with three countries (Poland, Hungary, Czech Republic) and in a second phase with Estonia and Slovenia;" and opening "negotiations at the same time with the five CEEC countries mentioned and with Cyprus."²⁰⁰ Regardless of the starting point, it has not been seriously contested that negotiations will proceed at different speeds, and thus that countries which commence accession talks at the same time will not necessarily conclude them at the same time.²⁰¹

¹⁹⁷ See, e.g., Statement of Hungarian Minister Juhasz, AGENCE EUR., Feb. 5-6, 1996, at 14 ("I will place speed ahead of solidarity.").

¹⁹⁸ Compare Statement of Council President van Mierlo and Commission President Santer in Apeldoorn in March 1997, *Standing Conference on Enlargement*, *supra* note 189 (admitting that "enlargement negotiations would probably begin with some countries before others" and noting that the "Council will decide with which countries to start negotiations once it has received the Commission's opinions on the applicant countries and on the enlargement impact on Union's policies"), with Statement by EP Vice-President Hoff, *EP President Meets CEEC Counterparts*, in TOGETHER IN EUR., No. 105, Mar. 15, 1997 (it is "an accepted fact" that enlargement negotiations would begin "at the same time with all CEECs"); Statement by Commission President Santer, OMRI, *supra* note 13, Apr. 9, 1996 (he considers it more likely that CEECs will be admitted to the EU one by one rather than in groups, as has been the past practice); *van den Broek in Lithuania and Latvia*, in TOGETHER IN EUR., No. 107, Apr. 15, 1997 [hereinafter *van den Broek Statement*] (noting that each application is being analyzed on "an equal and entirely objective basis, strictly on [its] own merits" and that it is "virtually excluded . . . that all applicants for membership will actually join the Union on the same date, once the process of negotiation and ratification is over").

¹⁹⁹ *Enlargement Outlook*, *supra* note 192. The opinions — like those already prepared for Cyprus, *supra* note 193, and Malta, *supra* note 194 — must consider both the applicant country's economic and political situation. *Id.* Commission President Santer stated that the Commission will "differentiate its opinions, which analyse the real situation and, therefore, be a sort of moment of truth." *Standing Conference on Enlargement*, *supra* note 189. See also Commission Interim Report to the European Council on the Effects of Enlargement to the Associated Countries of Central and Eastern Europe on the Policies of the EU, *reported in BULL. EUR. UNION*, Nov. 1995, point 1.4.47; EP Resolution on Financing the Enlargement, *reported in BULL. EUR. UNION*, Dec. 1996, point 1.4.49.

²⁰⁰ AGENCE EUR., July 12, 1997, at 4. Denmark, Greece and Sweden wanted to start negotiations with all candidates at the same time (barring Slovakia), AGENCE EUR., Oct. 24, 1997, at 2, as did some of the countries that feared being left behind, AGENCE EUR., July 25, 1997, at 10. Latvia, for example, urged taking a "common starting line as a basis" then introducing differentiation in the process of negotiations" in order to "ensure [a] fair approach towards all candidate states." *Id.*

²⁰¹ See, e.g., Enlargement Interim Report, *supra* note 29 (Commission "stresses that countries will accede on an individual basis in the light of their economic and political preparedness and on the basis of the Commission's opinion on each application.").

The Commission presented its long-awaited opinions²⁰² and its "Agenda 2000" report²⁰³ to the Council and the EP on 16 July 1997. Emphasizing the "neutral and objective criteria" laid down by the European Council at its Copenhagen Summit in 1993, the Commission recommended that accession negotiations commence in early 1998 with Cyprus, the Czech Republic, Estonia, Hungary, Poland, and Slovenia,²⁰⁵ but not with Bulgaria, Latvia, Lithuania, Romania, Slovakia,²⁰⁶ or Turkey, despite the negative ramifications of such a decision.²⁰⁷ The EU has "promised" that these countries "can move to the 'fast-track' for prospective new members if they make sufficient progress in economic and political reform."²⁰⁸

Commissioner van den Broek observed that the "detailed and objective analysis leaves no doubt that there is a natural differentiation among the applicants for a variety of historical, political and economic reasons," and stressed that "differentiation in no sense means discrimination."²⁰⁹ Indeed, he has been at pains to emphasize that "all applicants are assured of membership" and that "it is not a question of if, but

²⁰² Commission Opinion on the Applications of Hungary, COM(97)2001 final; Poland, COM(97)2002 final; Romania, COM(97)2003 final; Slovakia, COM(97)2004 final; Latvia, COM(97)2005 final; Estonia, COM(97)2006 final; Lithuania, COM(97)2007 final; Bulgaria, COM(97)2008 final; the Czech Republic, COM(97)2009 final; and Slovenia COM(97)2010 final.

²⁰³ *Supra* note 29. Agenda 2000 presents not only the Commission's recommendations on enlargement, but also its study of the impact of enlargement on the EU. *Id.* See also AGENCE EUR., July 18, 1997, at 4 (describing the "Santer package" in some detail).

²⁰⁴ AGENCE EUR., July 17, 1997, at 3 (Commission concludes that it is possible to envisage opening accession negotiations with five countries).

²⁰⁵ See *id.* at 9. See also Delia Meth-Cohen, *Code Busting*, BUS. CENT. EUR., Sept. 1997, at 20.

²⁰⁶ Slovakia was excluded on political grounds "for its lack of democratic reforms." RFE/RL NEWSLINE, *supra* note 41, July 17, 1997. See also AGENCE EUR., July 18, 1997, at 8 (van den Broek asserted that there can be no compromise in respect to the need for "political institutions [guaranteeing] respect of democratic principles, the rule of law and minority rights."). Regarding Bulgaria and Romania, Commissioner van den Broek stated that they "still have to make progress on the road to reform" since reforms in both countries "were launched only after their present governments came to power." RFE/RL NEWSLINE, *supra* note 41, Dec. 8, 1997. He added that "citizens in the two countries should not blame the EU for their 'own political and economic past'." *Id.* Lithuania was excluded mainly on economic grounds, while Latvia was excluded for both political and economic reasons. AGENCE EUR., July 18, 1997, at 9. For a summary of the Commission's reasons for not recommending commencement of accession negotiations with these countries, see *id.* at 9-10.

²⁰⁷ For example, a report by the Centre for European Policy Studies noted that "beginning negotiations with certain countries first would not only 'cause considerable problems' but would also 'be crass.'" AGENCE EUR., Feb. 5-6, 1996, at 13-14. See also *Waiting for Brussels*, FIN. TIMES, Sept. 16, 1997, at 9 (noting that "the process of discrimination between membership candidates has been clumsily handled" and suggesting that "[i]f anything," those in the second wave "should get positive discrimination in the allocation of assistance.").

²⁰⁸ RFE/RL NEWSLINE, *supra* note 41, Dec. 15, 1997.

²⁰⁹ AGENCE EUR., July 17, 1997, at 4. See also AGENCE EUR., July 16, 1997, at 3 (Hungarian Prime Minister and EU President Juncker "stressed that the principle of differentiation would be at the basis of negotiations, not only when they opened but also for their conclusion"); AGENCE EUR., Oct. 23, 1997, at 4 (EU President Juncker confirmed that "[t]here will be 'group negotiations' as the 'CEECs do not form a group,' but they are independent and proud, and to consider them as part of a group would be to fall back into the Soviet logic.").

when.”²¹⁰

There was some speculation that the Luxembourg European Council, held in December 1997, might disregard the Commission's recommendations and decide to open negotiations simultaneously with all applicant countries “as [a] political act.”²¹¹ However, the European Council “decided to convene bilateral intergovernmental conferences in the spring of 1998 to begin negotiations with” the six countries recommended by the Commission.²¹² In an effort to soften the blow to the countries not placed on the fast track, the European Council decided to implement a French suggestion to “set up a European Conference which will bring together the Member States of the European Union and the European States aspiring to accede to it.”²¹³ Thus, enlargement will technically commence for all applicant countries at the first meeting of the European Conference in London on 12 March 1998,²¹⁴ but only Cyprus, the Czech Republic, Estonia, Hungary, Poland and Slovenia actually began negotiations in Brussels on 31 March 1998.²¹⁵

An enhanced Pre-accession Strategy involving “accession partnerships” and “increased pre-accession aid” has been created, which will “mobilize all forms of assistance to the applicant countries . . . within a central framework.”²¹⁶

The dispute over commencement of accession negotiations has been

²¹⁰ AGENCE EUR., June 6, 1997, at 9.

²¹¹ AGENCE EUR., July 12, 1997, at 5. See also AGENCE EUR., July 25, 1997, at 10 (Lithuania complained that the Commission's recommendations were “subjective, unjustified and politically motivated” and based on outdated or inaccurate data).

²¹² Conclusions of the Presidency (Luxembourg European Council, Dec. 1997) EU-Presidency Site of the Ministry of Foreign Affairs <<http://www.uepres.etat.lu/uepres/textes/conseil/13dec003eng.htm>> [hereinafter Luxembourg Summit Conclusions], at point 27.

²¹³ *Id.*, at point 4. In an apparent effort to address the likely fallout of non-simultaneous commencement of accession negotiations, the French suggested setting up a standing conference on enlargement “which would meet once a year at the summit level and more often at different levels (of the ministers or of officials), in which would gather all EU member states and all the applicant countries, independently of the timing of their negotiations with the Union.” *EP President Meets CEEC Counterparts in TOGETHER IN EUR.*, No. 105, Mar. 15, 1997. The purpose, according to Council President von Mierlo, “is to give all applicant countries the feeling that they are eligible to become EU members, whether it will be in the short or longer term.” *Id.* France's proposal was endorsed by the Commission, see AGENCE EUR., July 17, 1997, at 2, and discussed by the General Affairs Council in Mondorf in Oct. 1997. AGENCE EUR., Oct. 27-28, 1997, at 2 (participants in favor of this suggestion “observed that by first convening [the European] Conference open to all, the European Union could better convince all candidate countries that they are really included in the process”).

²¹⁴ RFE/RL NEWSLINE, *supra* note 41, Jan. 27, 1998. Eleven countries attended this European Conference, but Turkey boycotted it. Stuart Parrot, *East-Central Europeans, But Not Turkey, Meet in London*, RFE/RL NEWSLINE, *supra* note 41, Mar. 12, 1998.

²¹⁵ *Id.* See Joel Blocker, *Six Nations Begin Enlargement Talks*, RFE/RL NEWSLINE, *supra* note 41, Mar. 31, 1998 (ceremonial opening of EU “expansion process”); Joel Blocker, *EU Begins Expansion Talks With Six Countries*, RFE/RL NEWSLINE, *supra* note 41, Mar. 31, 1998.

²¹⁶ Luxembourg Summit Conclusions, *supra* note 212, at point 13. See generally *id.* at points 13-30; Agenda 2000, *supra* note 29; AGENCE EUR., July 11, 1997, at 4. See also COM(97)112 final (new guidelines for pre-accession PHARE assistance).

resolved, at least for those countries placed on the fast-track. Attention has now shifted onto substantive issues, where serious obstacles remain.

Developments surrounding the IGC lent force to the perception that the EU was trying to slip the noose of its commitment to enlargement.²¹⁷ In particular, the IGC failed to undertake the institutional reforms and policy changes²¹⁸ that are generally considered the preconditions to the next wave of enlargement.²¹⁹ While the desire to delay the enlargement process was surely not the sole, or even a principal reason for deferring institutional and other policy reform, some perceived the lack of political will to embrace the

²¹⁷ See, e.g., Commission Enlargement Report, *supra* note 31, at 9-10 ("integration of [the] new democracies into the European family presents a historic opportunity . . . ; [the EC] has never been a closed club, and cannot now refuse the historic challenge to assume its continental responsibilities and contribute to the development of a political and economic order for the whole of Europe."); Essen Summit Conclusions, *supra* note 29; Copenhagen Summit Conclusions, *supra* note 31.

²¹⁸ See also EP Resolution of 17 November 1993 on the Negotiations Concerning Enlargement of the Union to Include Austria, Sweden, Finland and Norway, 1993 O.J. (C 329) 146 (expressing the view that "enlargement should coincide with institutional reforms" and calling for "the opening of an interinstitutional dialogue on the changes needed to increase the effectiveness of the Union's strategy as a whole, including improvements to the system of qualified majority voting, recourse to a double qualified majority instead of unanimity, revision of the arrangements for the composition, appointment and supervision of the Commission and strengthening the powers of its President, provision for an automatic presidency rotation system and more flexible procedures for revising the treaties" and for further "democratizing the Union by extending procedures for joint decision-making and cooperation and making use as often as possible of qualified majority voting when adopting common foreign and security policy decisions"); AGENCE EUR., June 13, 1997, at 5 (EP confirmed that "there could be no EU enlargement negotiations as long as the institutions had not been reformed"); Blocker, *supra* note 188 ("key reforms include the future size of the . . . Commission, re-weighting of members' votes among small and large states, and the extension of majority voting to such sensitive areas as common foreign and security policy"); *The Intergovernmental Conference Starts Dealing with the Difficult Issue of Institutions*, in TOGETHER IN EUR., No. 105, Mar. 15, 1997. For a general discussion of the negotiations on "the most divisive institutional issues" in the context of the IGC, see *On Commissioners and Weighted Voting*, in TOGETHER IN EUR., No. 107, Apr. 15, 1997.

As for how the results of the IGC are likely to affect the enlargement process, see Kevin Done, *Hopes for EU Growth by 2000 'Very Optimistic'*, FIN. TIMES, Dec. 12, 1996, at 3 (report by U.N. Economic Commission for Europe warns that "[i]f the IGC fails to deal effectively with the big problems facing the Union, especially those affecting the process of decision-making and the effectiveness of the present institutional structure" enlargement "could be postponed indefinitely"); Kirsty Hughes, *The 1996 Intergovernmental Conference and EU Enlargement*, 72 INT'L AFFAIRS 1, 4 (Jan. 1996) (the IGC "will not . . . address these major strategic issues, which leaves questions about when or how they will be addressed unanswered."); (Danish representative declared that Denmark's priority for the IGC is enlargement and that "the outcome of the IGC will have to be seen in the light of what it has accomplished on this, and not only at institutional level"). In anticipation of the December 1997 meeting of the European Council, Luxembourg Foreign Minister Poos declared his government's intention to "conduct an objective, non-discriminatory study of documents on enlargement submitted by the Commission, so as to enable the Luxembourg European Council on 12 and 13 December [1997] to launch the enlargement process." *Id.*

²¹⁹ But see RFE/RL NEWSLINE, *supra* note 41, June 30, 1997 (EU promised "that the union's . . . failure [in the IGC] to agree on institutional reforms will not affect its eastward expansion"; Dutch Premier Kok affirmed that "enlargement . . . will not be slowed down by internal reform questions"); AGENCE EUR., Oct. 29, 1997, at 4-5 (French and German parliamentarians "regretted that the IGC had ended without the most essential reforms necessary for enlargement being decided, and . . . added that, in their view, the institutional reforms are not a hindrance to enlargement; on the contrary, the prospects for enlargement must be the lever for deepening.").

EA countries as a drag on the IGC.²²⁰ Notwithstanding the Commission's recommendation and the Luxembourg European Council's decision to commence accession negotiations with six applicant countries, the Commission has made it clear that there can be no enlargement before the "necessary institutional reforms have been carried out."²²¹ The Commission has accordingly called for a new IGC in early 2000 to undertake the necessary "institutional reform (hardly begun in the Amsterdam Treaty)".²²²

The accession criteria set at the Copenhagen Summit²²³ are: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for the protection of minorities;²²⁴ a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union; and the applicant's ability to take on the obligations of membership, i.e., the *acquis communautaire*, and adhere to the aims of political, economic and monetary union.

The EA countries will certainly not have an easy time fulfilling the economic conditions for accession.²²⁵ But, the relatively amorphous political criteria are even more likely to prove stumbling blocks for the applicant countries. One "touchstone" principle that will be important in the context of CEEC enlargement is that applicants must accept the *acquis communautaire* in full, and that no permanent opt-outs are available.²²⁶ Accession is thus a moving target in the substantive sense, as well as in the temporal sense described above: Internal EU developments create ever more

²²⁰ The Polish Ambassador to the EU remarked, on the eve of the Cannes Summit in June 1995, that he was "not very optimistic" about the CEEC's prospects for accession because of "deterioration" in the general climate in the EU. In particular, he noted that preparation of the IGC led to the emergence of many problems and questions internal to the EU, which in turn caused the member states to be more reluctant to undertake eastern enlargement. AGENCE EUR., June 23, 1995, at 9.

²²¹ AGENCE EUR., June 28, 1997, at 10. Dutch Foreign Minister van Mierlo observed, in this regard, that "we still have a lot of time in which to resolve this." *Id.*

²²² AGENCE EUR., July 12, 1997, at 2.

²²³ Copenhagen Summit Conclusions, *supra* note 31.

²²⁴ See *Minority Views Sought for Enlargement*, in TOGETHER IN EUR., No. 106, Apr. 1, 1997 (Commissioner van den Broek asked OSCE High Commissioner for national minorities to provide an "assessment of each [applicant] country's level of protection for its national minorities").

²²⁵ Bárta & Richter, *supra* note 1, at 14-16, have argued that more precise accession criteria are needed, particularly in the economic sphere. These authors provide an economic analysis of the enlargement process and prospects. They assert that the "low economic level of CEECs seems to be the major single obstacle in the process of their integration into the EU." *Id.* at 4. Hungarian National Bank Governor Suranyi has argued that CEECs seeking EU membership "should not be required to meet the Maastricht economic criteria immediately" since "inflation in the region will be much higher for at least five to ten years than what is required in the strict . . . criteria". OMRI, *supra* note 13, Nov. 8, 1996. But see Anthony Robinson, *Dawn of a More Hopeful Era*, FIN. TIMES, Apr. 15, 1996, at 1 (noting that the "EBRD is starting to talk seriously of the prospect of 'Asian-style' growth rates spreading across the region from central Europe where they are already in sight"); *Of Hype and Halos*, *supra* note 183, at 38 (noting that Poland "has had a budget deficit of less than 3% of GDP for the last three years, meeting the Maastricht criterion and putting to shame many of its Western European neighbours"). See also *Long Sprint*, *supra* note 183, at 39 (arguing that Poland "might be an economic case for early [EU] membership").

²²⁶ Preston, *supra* note 51, at 452-53.

"qualitative" barriers to full membership. For example, the move towards economic and monetary union²²⁷ and the growing emphasis on the Third Pillar (i.e. justice and home affairs) issues²²⁸ are certain to cause problems for Central and East European countries.

Even more significant, in the context of applicant countries' ability to take on the obligations of membership, is the growing emphasis on the need for EA countries to undertake "special efforts . . . to strengthen public administration and the judicial system."²²⁹ The Commission (DGX) has described the problem as follows:

Imagine being asked to build a state-of-the-art spacecraft using nothing more than a cheap screwdriver and a handful of nails. This is the scale of the task facing many of the [CEEC applicant countries which] need to put in place an efficient public administration system capable of coping with EU legislation . . . All applicants have theoretical

²²⁷ See, e.g., Commission Opinion on Political Union and Enlargement, *supra* note 188 (commitments based on TEU "must be fully respected, particularly as regards the single currency").

²²⁸ This has become a major area of attention and concern, particularly in the wake of the TREATY OF AMSTERDAM, *supra* note 31, which calls for the progressive establishment of an area of freedom, security and justice. When effective, the Treaty of Amsterdam will amend Article B of the TEU, which states as an objective "to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, immigration, asylum and the prevention and combating of crime." See *IGC and the Third Pillar*, in *TOGETHER IN EUR.*, No. 105, Mar. 15, 1997 (draft text on justice and home affairs submitted to IGC); Amsterdam Summit Conclusions, *supra* note 188.

The EU is very concerned about these issues in the context of enlargement. See generally *New PHARE Orientations*, *supra* note 58 (new PHARE orientations allocate 30% of funds to institution-building in the EA countries; "[p]articular attention will be paid to strengthening the CEECs abilities in the area of justice and home affairs"). See also OMRI, *supra* note 13, Aug. 9, 1996 (EU helps Lithuania draft money-laundering law, noting that this is "one of the most important criteria for membership"); OMRI, *supra* note 13, Nov. 15, 1996 (Baltic States signed joint declaration with *inter alia* EU to combat money laundering); OMRI, *supra* note 13, Nov. 25, 1996 (interior ministers of Belarus, Lithuania, Poland, Russia, Slovakia and Ukraine agree to step-up cooperation in fighting cross-border crime); EIS EUR. REP., *supra* note 106, Dec. 11, 1996 (Commission's Director-General for Customs and Indirect Taxation gave CEECs "the unambiguous message . . . that effective customs services by the time of EU accession are 'a decisive aspect of their readiness for membership, in order not to put at risk the economic benefits of the Single Market and the security of European citizens.'"); OMRI, *supra* note 13, Dec. 12, 1996 (EU and Council of Europe sponsored conference in Sofia on combating organized crime and corruption); *EP March Plenary Session*, in *TOGETHER IN EUR.*, No. 105, Mar. 15, 1997 (EP Committee of Inquiry Report into Fraud in the Transit System noted that "organised crime is deeply involved in transit fraud, the organisations concerned originating not only in the [EU] but in . . . the newly-opened countries of central and eastern Europe and the ex-Soviet Union"); EUR. DIALOGUE, *supra* note 41 (May/June 1997).

²²⁹ *van den Broek Statement*, *supra* note 198. The need to "establish administrative and judicial structures which can ensure that the new legislation will actually be implemented" has been a topic of discussion within Association Council meetings. See, e.g., *AGENCE EUR.*, Feb. 28, 1996, at 8 (EC-Romania). According to van den Broek, "we are now entering a phase when the proper implementation and enforcement of the new laws is just as important as the laws themselves." *Statement of Commissioner van den Broek*, *supra*. See also, OMRI, *supra* note 13, Mar. 10, 1997 (van den Broek told Romanian leaders that their country's "integration into the EU will heavily depend on the passage of legislation that meets EU norms [and] on 'administrative efficiency' . . .").

programmes in place for taking on the *acquis*, but that is not necessarily the point. It is relatively easy to adopt legislation in national parliaments. Making it function on the ground is another matter.²³⁰

Commissioner van den Broek emphasized repeatedly in 1997 that democracy and rule of law are essential preconditions to membership, and that implementation of the *acquis communautaire* "requires independent judges and prosecutors in addition to changes in the national legislation. This can only be achieved through education and training and a gradual evolution of daily practice."²³¹

Even if the chosen EA countries were ready to take on the burdens of membership, enlargement presupposes that the EU itself is ready to absorb new members. This substantive barrier to accession is likely to be the most difficult to breach. During the early and mid-1990s, the EU placed enormous emphasis on the need for the CEECs to ready themselves for integration. Now that the artificial timing barrier has fallen, the EU has reached back to the Copenhagen Summit Conclusions of June 1993 and reminded the applicants that accession not only presupposes their own readiness, but also hinges on the EU's "capacity to absorb new members, while maintaining the momentum of European integration."²³² In mid-1997, when accession negotiations would have commenced if the EU had kept its earlier promises, the Commission brazenly confessed that "before facing the complexities of enlargement, [the EU] needs to address internal problems as well as come up with a strategy for the future which includes the uncertainties of enlarging the union."²³³ Thus, additional Commission studies were required before accession negotiations could begin: first, an

²³⁰ *Public Administration*, in EUR. DIALOGUE, *supra* note 41 (July/Aug. 1997). See also Buxbaum, *supra* note 49, at 133 (at present "the overabundance of the wrong type of vertical, administrative structures -- the structures of the command economy -- is matched only by the hypertrophy, if not the total absence, of the right type of administrative structures with a clear delegation of legislative and judicial authority subsumed within general legislative policy guidelines.").

Accordingly, PHARE will henceforth "concentrate on strengthening the CEECs democratic institutions and public administrations" for the EA countries; to that end, 30% of PHARE funds will be reserved for institution-building. *New PHARE Orientations*, *supra* note 58.

²³¹ *Statement of Commissioner van den Broek* (Noordwijk Conference, June 23, 1997), European Union Website <<http://europa.eu.int/en/comm/spp/me/me970623.html>>. See also Richard Rose & Christian Haerpfer, *Democracy and Enlarging the European Union Eastwards*, 33 J. COMMON MKT. STUD. 427 (1995) (analyzing "the chances for democracy" in the CEECs).

²³² Copenhagen Summit Conclusions, *supra* note 31. See Báta & Richter, *supra* note 1, at 5-10, for an analysis of the budgetary implications of enlargement. They argue that the timing of CEEC enlargement "is very much dependent on the level of the budgetary burden." *Id.* at 5. The current budget is the so-called Second Delors package (1993-1999). The negotiation of the First Santer Package is expected to absorb the EU's attention after conclusion of the IGC. *EU/Agenda 2000: No Budget Explosion After 1999*, say Commissioners, EIS EURO-EAST REP., *supra* note 57, Dec. 10, 1996.

²³³ *Countdown to Membership*, in EUR. DIALOGUE, *supra* note 41 (July/Aug. 1997). See also AGENCE EUR., Oct. 23, 1997, at 3 (Commission President Santer calls for "a meeting to do, in institutional terms, what must be done before enlargement").

impact study of the effect and cost of enlargement on a sector-by-sector basis; and second, a horizontal or composite study that will provide a strategic overview of the enlargement process.²³⁴ The horizontal study addresses sensitive policy issues -- such as redistribution under the Common Agricultural Policy (CAP) and structural policy²³⁵-- and draws attention to what are certain to pose major stumbling blocks to the applicant countries.²³⁶ If there were ever any outstanding doubts about the likely result of this stage of the process, they have been put to rest by the EU's statement -- made in the wake of the long-awaited conclusion of the IGC -- that "[i]t is possible in this turbulent and uncertain stage of proceedings that enlargement as a whole will be delayed due to one of these horizontal issues, rather than any particular circumstance in any one country."²³⁷

The enlargement process must be based on "the principle of reciprocity" according to which "adaptations will have to be made on both sides."²³⁸ Ultimately, enlargement will depend on the "political will of the [EU] countries," which must be measured against the "yardstick . . . [of]

²³⁴ *Countdown to Membership*, *supra* note 233. The Amsterdam Summit Conclusions, *supra* note 188, refer to this as the Commission's "comprehensive communication (Agenda 2000) covering the development of Union policies including the agricultural and structural policies, the horizontal questions related to enlargement and finally the future financial framework beyond 1999," and invite "a comprehensive report to the European Council at its December [1997] meeting in Luxembourg." "Agenda 2000"-- originally the title of a Commission seminar held in November 1996 -- now refers to the report released by the Commission in July 1997. See *supra* note 29. Compare Done, *supra* note 218, at 3 (re: U.N. Economic Commission for Europe Report) with *UN Adds to Enlargement Debate*, in EUR. DIALOGUE, *supra* note 41 (May/June 1997) ("over-optimistic"). German President Herzog has warned that "aspiring member countries will have to bear most of the integration costs." OMRI, *supra* note 13, Feb. 27, 1997.

²³⁵ Commission DG X has reiterated that the two major challenges are the CAP and structural funds, which together account for some 80-90% of the EC budget and are especially sensitive to the "rural, low-income character" of many of the EA countries; thus "neither policy can absorb ten new members without significant reform." *Id.* The CEEC Agricultural Study, *supra* note 29, addresses some of these issues and was presented to the European Council at its Madrid Summit. See Madrid Summit Conclusions, *supra* note 189 (Alternative Agriculture Development Strategies in the EU in View of Enlargement). See also Bárta & Richter, *supra* note 1, at 6-8; *Long Sprint*, *supra* note 183, at 39 (observing "the hope . . . that the drive to expand the EU eastwards will have positive effects on both sides, forcing the EU to speed up reform of the CAP, which devours 60% of its total budget . . ."). Compare Statement of EU Budget Commissioner Liikanen, AGENCE EUR., Jan. 20, 1996, at 2 (CEECs "would not be able to absorb efficiently so much Community money" if current Structural Funds system were extended to them).

²³⁶ In addition to the inevitable controversy and delay that will attend reform of the CAP and regional policy, the Commission (DG X) has observed that the task presented is a "Catch 22: the EU cannot decide which new members to take on until it knows what impact enlargement will have on its policies as a whole. But neither can it determine what that impact will be until it knows exactly which countries are going to join." *Countdown to Membership*, *supra* note 233.

²³⁷ *Id.* The Commission (DG X) has concluded with a warning: "Although there is no doubt that each country will, in the final analysis, stand alone, the impact of the Commission's horizontal analysis should in no way be underestimated." *Id.*

²³⁸ Statement of Polish Prime Minister Olesky During the Meeting of the European Council and Associated States (Cannes, June 27, 1995), Polish Gov't Website, *supra* note 176.

internal reforms of the Union . . . ”²³⁹ This process is bound to continue well into the next century.

3. The Participation Paradox

The most disturbing (and intractable) paradox in the context of East-West European integration concerns the gap between democratic rhetoric and reality. It is undisputed that the EAs are meant to encourage the transition towards democratic government as well as market economies in Central and Eastern Europe.²⁴⁰ At the same time, however, it is clear that the EU's vertical association strategy is profoundly anti-democratic, in so far as the strategy has denied the EA countries an opportunity to participate in decisions or even discussions which affect their interests.²⁴¹ David Kennedy observed that “[t]he internationalization of democratic rhetoric has accompanied a domestic displacement of democratic politics,”²⁴² which results in “the establishment of a political instance freed from the institutions and pressure points of a national mass politics and responsive only to the bureaucratic imperatives of managing an industrial policy and the wishes of member State governments.”²⁴³

The deficiencies in the EU's strategy are of both substantive and procedural character. The EA countries have been denied participatory rights in two substantive areas: approximation of laws and the Intergovernmental Conference (IGC). The procedural deficiencies inhere in the Structured Dialogue framework itself.

The requirement that EA countries approximate their laws to those

²³⁹ *Address by Polish Foreign Minister Bartoszewski* (Prague, May 29, 1995), Polish Gov't Website, *supra* note 176. For a skeptical view, see Joel Blocker, *Europe: EU Promises Most, Delivers Least to the East*, RFE/RL NEWSLINE, *supra* note 41, Nov. 11, 1997 (“Nor is there much prospect in the near future of the EU matching its rhetoric with a realization of the East's hopes for early membership. That discouraging assessment is widely shared not only by many historians and analysts, but also by some high EU officials — although they will not say so in their own names.”).

²⁴⁰ For example, the Hungarian EA provides:

CONSIDERING the opportunities for a relationship of a new quality offered by the emergence of a new democracy in Hungary; . . .

REAFFIRMING their commitment to pluralist democracy based on the rule of law, human rights and fundamental freedoms, a multiparty system involving free and democratic elections . . . which constitute the basis for the association; . . .

Preamble, Hungarian EA, *supra* note 42.

²⁴¹ The focus of this critique is not on the so-called “democratic deficit” within the EU itself, although this becomes relevant in the context of the EA countries' desire to accede to the EU. See discussion of the EU's failure to undertake institutional reform, *supra* note 218.

²⁴² Kennedy, *Architectures*, *supra* note 1, at 384.

²⁴³ *Id.* at 384-85.

of the EU has already been noted.²⁴⁴ This sweeping obligation does not carry with it any rights to participate in the process of making or modifying EC law.²⁴⁵ This everyday aspect of accession²⁴⁶ is particularly offensive in Central and Eastern Europe, where transition and enlargement are intimately tied to the promotion of democracy.²⁴⁷

The CEEC White Paper²⁴⁸ -- nobly intended "to assist the Central and East European countries with their planning and programming"²⁴⁹ -- sets forth in elaborate detail "the essential legislative measures in the sphere of

²⁴⁴ See discussion *supra* text accompanying notes 48-51. It bears repeating that PCA countries are merely urged to do so. *Supra* note 52.

²⁴⁵ Compare EEA Agreement, *supra* note 170 (which pairs more concrete approximation obligations with limited rights to participate in EC legislative procedures). The EEA Agreement "establishes a permanent information and consultation process covering all stages in the preparation of Community instruments." BULL. EUR. COMMUNITIES, May 1992, point 1.2.1. See also Commission Proposal of 5 October 1993 Concerning Arrangements for Implementing the EEA Agreement, COM(93)466 final, 1993 O.J. (C 290) 5 (decision-making procedures in cases where the decisions to be taken by the EEA Joint Committee are simply an extension of an existing Community provision to the EEA or where they involve the adoption of the "interim *acquis* package" i.e. all Community instruments of relevance to the EEA published between Aug. 1, 1991 and the entry into force of the EEA Agreement).

²⁴⁶ "Harmonization in the wake of liberalization requires openness towards a reception of the legal regimes appropriate to modern versions of liberal economic-organization regimes." Buxbaum, *supra* note 49, at 126. However, that author goes on to note that "harmonization is at war with the rest of the necessary goals -- with codification and with liberalization. Approximation of yet to be liberalized, yet to be codified -- yet to be written! -- laws to assure their compatibility with European Union legislation, and thus to assure at least a better trade and investment relationship . . . if not also a better starting position for possible later accession and membership, is a daunting task." *Id.* at 130. Thus, one way to characterize the problem is how to "harmonize harmonization with creation, codification, and liberalization of laws." *Id.* Compare *Dream On*, BUS. CENT. EUR., Feb. 1997, at 24 (noting that some CEEC governments believe that it is "better to regulate even if the regulation is not very sophisticated" and observing that Hungary may have "passed 120 new laws and 124 amendments" but that Hungarian "laws and regulations are still way off EU norms" in the financial and business sectors).

²⁴⁷ CEEC receptivity to harmonization varies. Buxbaum concludes that it is "not even the actual stage of transformation/liberalization, but rather the state of discourse or political/societal consensus about the legitimacy of the goal and pace towards a liberal economy, that influences [the] attitude towards harmonization." Buxbaum, *supra* note 49, at 128. He notes further that in the context of transition it is impossible to focus on "harmonization as an autonomous desideratum on the part of these countries." *Id.* Rather, harmonization "is a supportive value for other ends, ends concerning economic and political and even societal and cultural goals, not an end in itself." *Id.* at 134. In the end, he concludes that this is a "story of partly externally imposed, partly internally desired, adaptation of the legal and administrative systems of a still-transforming group of polities to the standard laws of democratic states with liberal economic systems." *Id.* at 135.

A Polish author has argued, in view of the "[m]any difficulties [that] confront Poland during the integration process," that the "continuity and coherence of Poland's legal system must be maintained" and that [p]reference should be given to the reformist methods of legal harmonization as long as they are able to ensure a sufficient degree of legal conformity," notwithstanding the fact that the EA allows "a large degree of freedom and does not demand that, in most areas, Community institutions be followed slavishly." Jan K. Bielecki, *Poland and the European Community: Toward Full Integration*, 16 HASTINGS INT'L & COMP. L. REV. 619, at 630 (1993).

²⁴⁸ *Supra* note 29. The CEEC White Paper calls for "the careful scrutiny and implementation of nearly eight hundred European legal acts." *Statement of Polish Prime Minister During Interministerial Meeting of the Team for the Europe Agreement* (Warsaw, Feb. 16, 1996), Polish Gov't Website, *supra* note 176.

²⁴⁹ BULL. EUR. UNION, May 1995, point 1.4.63.

the internal market and in other spheres such as competition and social and environmental policy, which are of vital importance for the operation of the market."²⁵⁰ The CEEC White Paper also establishes priorities for each applicant country.²⁵¹ The Commission sent the EA applicant countries a 200-page questionnaire in April 1996, and requested that they submit their completed responses within three months' time.²⁵² It can hardly come as a surprise that this program has been hard for some CEECs to swallow.²⁵³ Indeed, there is a perception that the CEEC White Paper insists on "some things . . . [that] have not even been achieved in certain Member States."²⁵⁴

The second context in which the EA countries were deprived of substantive participatory rights was in regard to the recently-concluded IGC. The EA countries repeatedly requested (and were denied) the opportunity to participate in the IGC.²⁵⁵ While the IGC was clearly concerned with affairs

²⁵⁰ *Id.*

²⁵¹ The Annex to the CEEC White Paper, *supra* note 29, adopted by the Commission on May 10, 1995, further sets out:

[I]n 23 different spheres of legislative activity, and on a deliberately selective basis, the Articles of the Treaty and secondary legislation which have a direct impact on the freedom of movement of goods, services, persons and capital. A logical order for the adoption of these measures is established, with the "key" measures being separated from the whole body of measures applicable, it being understood that it is up to the associated countries themselves to set their priorities in accordance with their own situation and strategies; [and] stresses the need to create the necessary administrative and organizational context to ensure that this legislation can be implemented effectively. As a guide for the Central and East European countries, the Annex contains a summary of the structures needed to ensure implementation of Community legislation and identifies relevant national (or international) structures in the light of the experience acquired within the Union in this matter . . .

Id. It is unlikely that EU's priorities will always coincide with those of the CEECs. See, e.g., *van den Broek in Romania*, in *TOGETHER IN EUR.*, No. 105, Mar. 15, 1997 (Commissioner van den Broek emphasized that "Romania must improve its process of approximation of legislation and monitor progress on the priorities set in the Commission's White Paper"). But see *Estonia to Give Priority to Joining EU*, *REUTER EUR. COMMUNITY REP.*, *supra* note 69, Dec. 10, 1996 (Estonian Prime Minister Vaehi said that "the drafting of laws . . . related to the EU will take precedence over purely domestic issues").

²⁵² OMRI, *supra* note 13, Apr. 29, 1996.

²⁵³ Some misunderstandings surrounding the legal effect of the CEEC White Paper had to be smoothed over in the framework of the Structured Dialogue. At the joint ministerial meeting held in Luxembourg on June 6, 1995, a "consensus was reached" that the "White Paper . . . created no new conditions for the future accession negotiations, and . . . that each country had to adopt its own programme of preparation for the internal market." *BULL. EUR. UNION*, June 1995, point 1.4.59.

²⁵⁴ *AGENCE EUR.*, June 23, 1995, at 10 (statement by Polish Ambassador Kulakowski).

²⁵⁵ See, e.g., *AGENCE EUR.*, May 31, 1995, at 5 (Hungary "is not seeking to play an active role in the preparation or in the actual events of the 1996 IGC, but it would in any case like to be consulted through existing mechanisms of dialogue and cooperation, particularly the Council & Association Committee [created by the EA] and the various ministerial meetings [that take place within the structured dialogue]"); *Id.* (The "Polish Government's desire for Polish involvement in preparations for the 1996 [IGC], [as well as] the timing of the start of accession talks, the holding of a special European summit with the Central and East European countries, and Poland's participation as an observer in meetings of the European Monetary Institute, the Euro-Mediterranean Conference in Barcelona in November [1995] and the 1996 Asia-Europe Summit"). *Q&A: Estonia and the EU*, *INT'L HERALD TRIB.*,

internal to the EU, it is equally true that excluding the CEECs (and other applicants for membership) from participation was tantamount to excluding them from the drawing board for the "new" Europe.²⁵⁶

Procedural flaws afflict the Structured Dialogue²⁵⁷ which constitutes the principal framework for ongoing participation between the EU and the EA countries.²⁵⁸ The Structured Dialogue is a framework for regular political cooperation -- on a multilateral basis -- between the CEECs and EU

Dec. 19, 1994, at 5 (Estonian Foreign Minister Luik considered it "very important that the association countries be actively involved in the preparation of the [IGC] documents," not least because they will deal with "the financial and practical implications of the enlargement"; this document is especially important "because it's easy to prove financially that the enlargement is not profitable, that [it] is too complicated"). In the end, the associated countries were not invited to attend the Amsterdam Summit in June 1997; however, they were invited to attend a special meeting of foreign ministers later that month. *No Invitation to Amsterdam Summit*, in *TOGETHER IN EUR.*, No. 107, Apr. 15, 1997.

²⁵⁶ The commission has acknowledged the importance of including the CEECs in this process. See Commission Enlargement Report, *supra* note 31, at 18 (recognizing the CEECs' "political needs" and proposing the creation of a "European political area" which would build upon the existing architecture in order to provide "reassurance that they will be treated as equal partners in the dialogue concerning Europe's future.").

²⁵⁷ See Copenhagen Summit Conclusions, *supra* note 31. For a detailed description of the circumstances surrounding the creation of the Structured Dialogue, see Hartnell, *Long and Winding Road*, *supra* note 1, at 203-04; Hartnell, *Association Agreements*, *supra* note 1, at 232-34. The Structured Dialogue basically involves: meetings on the fringe of the European Council; meetings at ministerial and other levels on questions related to the CFSP, as well as on home and justice affairs; meetings at ministerial or other levels "if necessary and in accordance with needs" on subjects of common interest. Copenhagen Summit Conclusions, *supra* note 31, at point I.26. "The Community proposes that the associated countries enter into a structured relationship with the institutions of the Union within the framework of a reinforced and extended multilateral dialogue and concentration on matters of common interest. The arrangements . . . include dialogue and concentration on a broad range of topics and in several forums." *Id.* at point I.13.

The EU also conducts relations with the various associated countries in the bilateral institutional framework established under each EA and PCA, discussed *supra* in note 41, as well as in the framework of other international organizations, such as those mentioned *supra* in note 21.

²⁵⁸ In fact, the Structured Dialogue itself resulted from earlier efforts to improve political dialogue. The drive for improved political relations began with, but did not end with the Visegrád Memorandum, *supra* note 130, which challenged the EC to deepen political dialogue with the EA countries. In the Joint Declaration of 5 October 1992 on Political Dialogue (Luxembourg Summit), EC and Visegrád foreign ministers agreed to strengthen political cooperation in the interest of the shared goals of: political convergence, better mutual understanding, and enhanced stability and security. *BULL. EUR. COMMUNITIES*, Oct. 1992, point 1.4.6. However, the nature of the contemplated political cooperation differed substantially from one side to another. The EA countries sought "gradual incorporation . . . into the political cooperation of the European Communities, especially via direct linking to the Common Foreign and Security Policy." Visegrád Memorandum, *supra* note 130. However, the EC had something other than full inclusion in mind.

The Commission offered a variety of important and concrete proposals for reform, which ultimately led to the Structured Dialogue and its ongoing adjustment. Noteworthy here is the tenor of the Commission's program, rather than its detail: the Commission envisioned a multilateral, pan-European "Political Area" that would extend political cooperation even beyond the EAs and thereby further the convergence of different economic and political systems. Commission Enlargement Report, *supra* note 31, at 18. In particular, the European Political Area conceived by the Commission would consist of a "structured institutional relationship" designed to serve the need for closer cooperation in a growing number of fields but that would not interfere with the EC's "own autonomous development." Commission Guidelines, *supra* note 29, at 6.

representatives.²⁵⁹

The EA (and particularly the Visegrád Group) countries have viewed this format skeptically since its inception, not least because of its multilateral nature. Criticism and calls for improvement have been continual.²⁶⁰ The most consistent complaint has been that Structured Dialogue meetings are often "ceremonial" in nature and do not provide adequate opportunity for discussion.²⁶¹ For example, Hungarian Minister Juhasz called it "more a monologue than any real dialogue, and criticized the

²⁵⁹ The participation of representatives of the EA countries in the biannual summit meetings of the European Council has been marginal. For example, representatives of the (then six) EA countries were invited at the last minute to attend a working dinner on the eve of the Essen Summit in December 1994, even though that Summit was slated to make momentous decisions concerning the future of Central and Eastern Europe. Lionel Barber, *EU's Outstretched Hand to the East Begins to Waver*, FIN. TIMES, Nov. 23, 1994, at 3. By the time of the Cannes Summit in June 1995, the number of associated countries invited to send representatives to the Cannes Summit had nearly doubled. (In addition to Bulgaria, the Czech Republic, Hungary, Poland, Romania and Slovakia, the French Presidency also invited the three Baltic States, Cyprus and Malta to attend.) The participation of these eleven countries in the Cannes Summit was equally (if not even more) marginal than the participation of the first six EA countries in the Essen Summit. See AGENCE EUR., May 29-30, 1995, at 5 ("Eleven Non-EU Countries invited by Mr. Chirac to Meet on the Fringe of the European Council"); AGENCE EUR., June 29, 1995, at 2 (French President Chirac "complained of the problems of 'communication' that . . . existed over Europe: 'something is not quite right . . . Many, many abuses have discredited Europe,' which 'has made the mistake of paying too much attention to its bureaucrats' . . . [T]he 1996 IGC . . . will have to make Europe more democratic and more effective . . ."). *Id.*

Numerous joint ministerial meetings have taken place within the framework of the structured dialogue, e.g. Luxembourg (Apr. 10, 1995), reported in BULL. EUR. UNION, Apr. 1995, point 1.4.60 (discussions were mainly concerned with preparation of the CEEC White Paper on adapting the associated countries' legislation to Community legislation in fields connected with the internal market, and with regional and interregional cooperation in Central and Eastern Europe). Special joint ministerial meetings are occasionally held to deal with particular issues. For example, there have been such meetings on agriculture (BULL. EUR. UNION, Sept. 1995, point 1.4.34), economic affairs and finance (BULL. EUR. UNION, Oct. 1995, point 1.4.61), education (BULL. EUR. UNION, Oct. 1995, point 1.4.62; BULL. EUR. UNION, Nov. 1996, point 1.4.67), foreign affairs (BULL. EUR. UNION, Apr. 1995, point 1.4.60; BULL. EUR. UNION, Oct. 1995, point 1.4.63), the internal market (BULL. EUR. UNION, Nov. 1995, point 1.4.49), justice and home affairs (BULL. EUR. UNION, Sept. 1995, point 1.4.33; BULL. EUR. UNION, Nov. 1996, point 1.4.68), and transport (BULL. EUR. UNION, Sept. 1995, point 1.4.35). More recently, EU and CEEC foreign ministers met to discuss cooperation in international organizations (i.e. the United Nations, the Organization for Economic Cooperation and Development, the Organization for Security and Cooperation in Europe, the World Trade Organization, and the World Intellectual Property Organization). *EU/CEEC Cooperation in International Organisations, in TOGETHER IN EUR.*, No. 107, Apr. 15, 1997. See also AGENCE EUR., Oct. 8, 1997, at 9 (first meeting of Social Affairs and Labour Ministers) and at 13 (third joint meeting of Transport Ministers).

²⁶⁰ See, e.g., Statement of Hungarian Minister Juhasz, AGENCE EUR., May 31, 1995, at 5 (noting the importance of the Structured Dialogue, but adding that improvement is "indispensable" to making it more efficient); Bárta & Richter, *supra* note 1, at 31 ("Although the term . . . 'structured dialogue' is expected to generate a feeling that the pre-accession movement entered another qualitatively new phase its real content is rather vague and misses the major signals illuminating the path forward so much needed and expected by the associated countries.").

²⁶¹ *EU "Ceremonial" Meeting with East European Foreign Ministers*, OMRI, *supra* note 13, Nov. 1, 1995 (British Foreign Secretary did not attend, since "[t]here is a limit to what can be achieved by ceremonial meetings"). Hungarian Minister Juhasz suggested that more time be devoted to these meetings, "in any case more than two hours, as is the case now." AGENCE EUR., May 31, 1995, at 5.

discussions for failing to focus on concrete and specific subjects."²⁶² The EU has made some strides toward ameliorating the associated countries' disenchantment in this regard, but more improvement is needed.²⁶³ Meanwhile, the CEECs' frustration has impelled them to seek other fora for meaningful participation.

4. The Sovereignty Paradox

The perennial issue of sovereignty plays an important role in the newly-emerging democracies in Central and Eastern Europe, as it continues to do within the EU itself. While related to the former discussion of democratic participation, the sovereignty paradox warrants special, if brief, mention.

The sovereignty paradox reveals itself within each EA country, in the contradictory impulses to revel in the newly-won sovereignty, on the one hand, and to join the EU, which demands a significant surrender of sovereignty, on the other.²⁶⁴ Many people in the region share the belief that "[i]ndependence must precede interdependence."²⁶⁵ Polish Primate Józef Glemp has observed that membership "is not just a political issue. The Church perceives it as a moral problem as well . . . a fight for independence, for preserving one's identity."²⁶⁶ This sentiment should not be ignored, lest

²⁶² *Id.* Polish Ambassador to the EU Kulakowski has echoed these comments. AGENCE EUR., June 23, 1995, at 9 (the Structured Dialogue "is more a limited dialogue than a structured dialogue" and there is no "real debate on fundamental problems"). When asked how he would make the dialogue more effective, he suggested the following changes: provide more time for meetings, since one hour for multilateral discussion on several major issues is unreasonable; improve preparation of the meetings by holding a preparatory meeting (e.g. within the CoRePer framework) prior to each ministerial meeting; and reducing the number of subjects on the agenda. *Id.*

²⁶³ See, e.g., Pre-accession Progress Report, *supra* note 29 (noting that the "successful functioning of the structured relationship . . . could be improved by concentrating on more concrete issues at joint meetings"). Commission President Santer also indicated that the substance of ministerial meetings which regularly take place within the "structured dialogue" framework "will be improved." AGENCE EUR., Jan. 24, 1996, at 11. Improvements include better preparation of ministerial sessions and limiting the number of agenda items. AGENCE EUR., Feb. 28, 1996, at 15.

²⁶⁴ Milward and others have argued that joining the EU can actually enhance the international position of some [small] countries. See ALAN S. MILWARD, *THE EUROPEAN RESCUE OF THE NATION STATE* (1992); Alan S. Milward & Vibeke Sørensen, *Interdependence or Integration? A National Choice*, in ALAN S. MILWARD ET AL., *THE FRONTIER OF NATIONAL SOVEREIGNTY: HISTORY AND THEORY 1945-1992* (1993). These arguments are surely being debated within some elite circles in Central and Eastern Europe. However, the sovereignty paradox is not primarily a product of rational analysis, and pertains more to popular attitudes than to political calculations. Compare Kennedy, *Architecture*, *supra* note 1, at 382 (the "internal market will be built . . . by sneaking up on sovereignty").

²⁶⁵ Stefan A. Bielski, *To Be or Not to Be Peers*, WARSAW BUS. J., Sept. 1995, at 17. See also Statement of Czech Prime Minister Klaus, *quoted in* Bugge, *supra* note 168, at 6 ("we do not wish to be the least bit less sovereign").

²⁶⁶ Bielski, *supra* note 265, at 11 (quoting Glemp). A more elegant, poetic and moving exploration of this phenomenon can be found in Drakulić, *supra* note 6. See also Statement of Slovene President Kucan, RFE/RL NEWSLINE, *supra* note 41, June 9, 1997 (people in CEECs "must not lose their identity in the rush for European unity").

it "sour" into "anti-European feeling" or fester into nationalism and xenophobia.²⁶⁷

The sovereignty paradox itself contains a paradox: it intensifies as time passes, and as the citizens of EA countries learn that accession entails costs as well as privileges,²⁶⁸ but abates as the discourse shifts away from sovereignty and towards identity.²⁶⁹

5. The Competition-Cooperation Paradox

The final and most intriguing paradox inherent in the current model of East-West integration inheres in the relations of the EA countries *inter se*. At the same time as trying to aid and to accommodate the wishes of the CEECs, the EU has urged them to cooperate with each other, in part because it rightly knew it could not fill the void left by the post-1989 collapse of COMECON trade, and in part because of the potential benefits to be gained through shared transition experiences.²⁷⁰ These countries have a great deal

²⁶⁷ Kolankiewicz, *supra* note 2, at 482 ("particularly among those countries where the need for affirmation as free sovereign states, having left the Russian sphere of influence, is most strongly felt. Nationalism and xenophobia, never far below the surface, would feed on this disillusionment, fostering all those pathologies which were feared but had not materialized in the aftermath of communist collapse.").

²⁶⁸ See Eurobarometer poll results *supra* in note 182 (showing a drop in enthusiasm for joining the EU). Kolankiewicz predicted "the inevitable demobilization of the European idea in the east." Kolankiewicz, *supra* note 2, at 479. Further, he has suggested that "the adjustment and rationalization of the idea of Europe following on more direct experience of its nature will give rise to a constellation of competing economic and political interests in eastern Europe over the region's own future geopolitical and economic alignments, just as the process of ratifying the Maastricht treaty [did] among the Twelve." *Id.*

²⁶⁹ Czech President Havel has called for "a new and genuinely clear reflection on what might be called European identity, a new and genuinely clear articulation of European responsibility, an intensified interest in the very meaning of European integration in all its wider implications for the contemporary world, and the recreation of its ethos or, if you like, its charisma." *Speech by President Havel before the European Parliament*, AGENCE EUR. DOCS, March 16, 1994, at 4.

²⁷⁰ See generally *supra* note 156. Some forms of subregional cooperation offered prospective benefits to the EU, as well as the CEECs. For example, President of the European Council De Deus Pinheiro "stressed the vital importance . . . of regional cooperation" in May 1992 at the second conference on the coordination of assistance to the independent States of the former USSR, *reported in* BULL. EUR. COMMUNITIES, May 1992, point 1.2.8. Donors were urged to "consider triangular arrangements, so that Central and East European countries could sell their output to the new independent States." *Id.* As a follow-up, the Community provided that certain funds (i.e. ECU 1,250 million) could be "used exclusively to enable the new independent States to import agricultural and food products and medical supplies *originating in the Community*, Bulgaria, Czechoslovakia, Hungary, Poland, Romania, Lithuania, Latvia, Estonia, Bosnia-Herzegovina, Croatia, Slovenia and the Yugoslav Republic of Macedonia." BULL. EUR. COMMUNITIES, July-Aug. 1992, point 1.4.13 (emphasis added). However, before they could become eligible to qualify for the loans, the independent States had to agree to accept joint and several responsibility for the former Soviet debt. BULL. EUR. COMMUNITIES, July-Aug. 1992, point 1.4.14. See Council Regulation 1897/92 Laying Down Detailed Rules for the Implementation of a Medium-term Loan to the Soviet Union and its Constituent Republics, Established by Council Decision 91/658/EEC, 1992 O.J. (L 191) 22.

in common,²⁷¹ beyond their shared history, their current transition towards market economy and democracy, and their fixation on the EU²⁷² as the road to salvation.

At first, the CEECs -- and especially the Visegrád Group of countries -- resisted being forced back into the COMECON bloc,²⁷³ in large part because they feared being forced to proceed on the road to accession at the speed of the slowest country²⁷⁴ and, worse, being consigned permanently to Europe's periphery.²⁷⁵ They were reluctant to associate with one another,

²⁷¹ Indeed, cooperation among the Visegrád Group of countries was premised on the assumption that these countries would "strive to build a common approach toward Western institutions." Declaration of Cooperation on the Road to European Integration, signed at Visegrád Summit, quoted in Vachudova, *supra* note 127, at 40. The Visegrád Summit was meant to mark a turning point, away from divergent approaches towards the West and away from competition with one another. *Id.*

²⁷² See Drakulić, *supra* note 6, at 4 ("[A] common denominator is still discernible, and still connects us all, often against our will. It is not only our communist past, but also the way we would like to escape from it, the direction in which we want to go. It's our longing for Europe and all that it stands for. Or, rather, what we imagine Europe stands for."). She goes on to address the questions "what does Europe mean in the Eastern European imagination. It is certainly not a question of geography, for in those terms we are already in it and need make no effort to reach it. It is something distant, something to be attained, to be deserved. It is . . . plenitude . . . [i]t offers choice . . . It is a promised land, a new Utopia, a lollipop." *Id.* at 12. See also Kolankiewicz, *supra* note 2, at 481 (noting that "the European idea . . . acts as an ideological shorthand standing for participatory democracy, the market economy, the rule of law, constitutional order and social citizenship.").

²⁷³ See, e.g., Kolankiewicz, *supra* note 2, at 478 (CEEC "ruling elites, burdened by the experience of the imposed cooperation of the Warsaw Pact and the CMEA, have found it equally difficult to associate for the furtherance of their common aims.").

²⁷⁴ The Visegrád countries in particular feared that their progress would be slowed down to match the pace of the slowest country. See, e.g., Statement by Hungarian Foreign Minister Jeszenszky, quoted in Vachudova, *supra* note 127, at 45 (Hungary "should not have to wait until the others also catch up"). This fear was most acute during the period after conclusion (i.e. December 1991) and before entry into effect of the Hungarian and Polish EAs. The ratification delays were a source of constant irritation, especially to Hungary and Poland, whose EAs were held up in 1993 while the EC concluded EAs with Bulgaria and Romania and negotiated new EAs with the successor countries after the break-up of Czechoslovakia. Thus, the EAs with Hungary and Poland could not enter into force on Jan. 1, 1993 as originally planned. See BULL. EUR. COMMUNITIES, Oct. 1992, point 1.4.15 (extending the validity of the Interim Agreements).

There are numerous instances in which the Visegrád countries, as the pioneers under the EU's association strategy, have won hard-fought battles, only to see the advantages they secured be passed along automatically to the other EA countries which came after them. See, e.g., AGENCE EUR., July 18-19, 1994, at 9 (Commission noted that the EAs "concluded with Bulgaria and Romania . . . will be fully brought into line with those of the" Visegrád countries); Meeting of EU-Romania Association Council, reported in BULL. EUR. UNION, Nov. 1995, point 1.4.67 (aligning Romania's timetable for EC trade concessions with that of the other associated countries).

²⁷⁵ The Visegrád countries feared the creation of a "Europe-bis" in Central and Eastern Europe, "a new division in Europe, the creation of a zone protecting the Community from the insecurity coming from the East, and that this Europe-bis [might] become something permanent as was the case of the past European historical developments." TOGETHER IN EUR., No. 9 (May 15, 1992) at 2. This fear has not abated. Czech President Havel said in May 1996:

It is hard to believe that one half of Europe will blossom, will be able to protect itself from different dangers and cooperate along democratic principles and that the other half of Europe will forever find itself in some indeterminate vacuum It is now six years ago that the Iron Curtain fell. I feel that relatively little has happened in these years. And time is working against the democrats, . . . against those who want peace and peaceful cooperation.

lest that cooperation seal their marginal fate.²⁷⁶ These attitudes persist even today.²⁷⁷

The EA countries, while deeply suspicious of the EU's motives and ambivalent towards each other, perversely discovered that cooperation among themselves provided yet another opportunity for them to compete with each other for the EU's approval.²⁷⁸ Less cynical leaders claim that their countries "are partners, not rivals" in their bid for EU membership.²⁷⁹

Havel, *quoted in* Bugge, *supra* note 168, at 5.

²⁷⁶ A Croatian writer explains the key role of the shift from collective to individualistic terms of reference:

With the collapse of communism, the individual countries started to emancipate themselves from their collective status and to distinguish themselves from their neighbours. So in Eastern European countries, the difference between "we" and "I" is . . . far more important than mere grammar. "We" means fear, resignation, submissiveness, . . . and somebody else deciding your destiny. "I" means giving individuality and democracy a chance.

Drakulić, *supra* note 6, at 4.

²⁷⁷ See, e.g., AGENCE EUR., Nov. 7, 1997, at 2 (Hungarian Ambassador to the EU Juhasz takes "explicit stance in favour of differentiation between applicant countries . . . Hungary supports the European Commission's '5+1' proposal . . . and doubts the practical feasibility . . . of a common starting date for negotiations, with later differentiation . . . The main consequence [of this approach] would be to delay the enlargement process as a whole, and 'this is a very high price to pay. . . In his view holding the process up cannot be in the interest of any applicant country.'").

²⁷⁸ See, e.g., Kolankiewicz, *supra* note 2, at 482 (observing that the "competition for EU entry which has previously served to lend impetus to the painful tasks of transformation . . . has also served to breed mutual suspicion and intimations of national superiority among the contestants."). One early example involves the Baltic States, where Estonia peeved Latvia and Lithuania by hurtling forward towards establishing a free trade area with the EC without any transition period. BULL. EUR. UNION, June 1995, point 1.4.63 (noting that "in view of the Baltic States' commitment to rapid economic and political reform and membership of the [EU], there is no transitional period for Estonia, and the transitional periods for the other two Baltic States are shorter than for the other associated countries").

An interesting example involves Hungary and Poland, which were both trying to meet with the EU to discuss their possible accession. In early 1997, the EU squeezed Poland to relax its import regime against citrus fruit, and refused to hold the pre-accession talks until Poland made adequate concessions. The meetings were finally held with both countries (on separate days). RFE/RL NEWSLINE, *supra* note 41, Apr. 29, 1997. At its meeting, Hungary decided to abolish its tariffs against citrus fruit as of the end of 1997. *Id.*

Ironically, the Structured Dialogue itself has become a major arena for this competition. See, e.g., Joint Ministerial Meeting of 22 May 1995 Between the Economic Affairs and Finance Ministers of the EU and the EA Countries (including the Baltic States which at the time had not yet concluded EAs), BULL. EUR. UNION, May 1995, point 1.4.64 (discussion of the CEEC White Paper, *supra* note 29, during which the EA countries had "the opportunity to present their programme of reform" and to "describe their macroeconomic restructuring programmes"); Joint Ministerial Meeting of 23 October 1995 (economic affairs and finance ministers), BULL. EUR. UNION, Oct. 1995, point 1.4.61 ("exchange of views highlighted the areas where progress had already been made by [CEECs]").

²⁷⁹ Hungarian President Göncz, to Czech Foreign Minister Zieleniec, RFE/RL NEWSLINE, *supra* note 41, June 10, 1997. See also OMRI, *supra* note 13, Feb. 19, 1996 (Polish President Kwasniewski stressed that Poland and Hungary are not competing to gain admission to the EU); OMRI, *supra* note 13, Nov. 20, 1996 (Hungarian Prime Minister Horn tells Polish President that their countries are "strategic partners"); OMRI, *supra* note 13, Jan. 21, 1997 (Polish President says Czech Republic, Hungary and Poland "would form close-knit group as they approach EU . . . membership"). A Hungarian writer has taken it even further. See György Konrád, *Turning Towards Europe*, BUDAPEST WK., Sept. 22-28, 1994, at 7 (urging CEECs to "cooperate where we can" especially in the cultural sphere; "begin building a spiritual unity with each other, and . . . like each other."). But see RFE/RL

The EU's decision to commence accession negotiations with just a few CEECs has exacerbated the tension among CEECs, but has also given new impetus to the need for cooperation. Most importantly, EA countries have come to appreciate the power that exists at the margins -- the possibility of intermediation -- in their space in-between Brussels and Moscow.²⁸⁰

The fact that the power structures are shifting does not obviate the existing vertical integration framework established by the EA agreements. In fact, the recent changes in Central/East European consciousness manifest themselves partly in incremental corrections of some of the imbalances identified above and examined in Part V below. However, the changes can also be seen in migration of the center and in redefinition of boundaries, which just might alter our mental maps.

IV. HAPPENINGS ON THE MARGINS: REGIONAL AND SUBREGIONAL INTEGRATION IN CENTRAL AND EASTERN EUROPE

A. INTRODUCTION

This part examines the key regional and subregional integration projects underway in Central and Eastern Europe, and considers their implications.²⁸¹ Section B sets forth the primary types of endeavors, and introduces each one briefly. In Sections C, D and E, the various regional

NEWSLINE, *supra* note 41, Apr. 30, 1997 (Slovene President Kucan speaking in Budapest says Europe is "doomed to cooperate").

²⁸⁰ See Kolankiewicz, *supra* note 2, at 480 ("[T]he absence of vigorous regional cooperation, mutual support and a common identity consisting of something more than post-communist societies awaiting European membership is most keenly missed and could, it is feared, jeopardize the east European enlargement of the Union. What each country lacks individually could be compensated for collectively."); László Lengyel, *Towards a New Model* (unpublished manuscript on file with author) ("A Western country in the East, or an Eastern country in the West - these are the alternatives for Hungary. It is still too early to judge whether this unique 'corridor' position will be similar to that of neutral Austria and Finland before they joined the EU, or rather to Tito's non-aligned Yugoslavia, or perhaps Kádár's Hungary which, though within the Soviet bloc, somehow enjoyed an intermediate position . . . One of the great political dilemmas of the 1990s is that there are no clear boundaries among the various models [i.e. EU or Russian-Balkan].").

²⁸¹ At its 1996 Dublin Summit, the European Council noted "the wider range of regional activities in Europe" and that "the Commission will submit regular reports to the Council on these regional initiatives." 1996 Dublin Summit Conclusions, *supra* note 190, at point I.21. The first general report prepared by the Commission in this field was the Commission Communication on European Community Support for Regional Economic Integration Efforts Among Developing Countries, COM(95)219 final [hereinafter Communication on EC Support] (including, but not limited to, European regional initiatives). A report focused on Europe was submitted to the Luxembourg European Council in Dec. 1997. See Report from the Commission to the Council on Regional Co-operation in Europe, COM(97)659 final [hereinafter Commission Report on Regional Co-operation].

and subregional undertakings are presented in some detail.²⁸² Finally, Section F explores the significance of the developments taking place within the broad framework established by this profusion of initiatives. In particular, it examines the meaning of these developments within the broader context of East-West European integration.

B. REGIONAL AND SUBREGIONAL DEVELOPMENTS IN CENTRAL AND EASTERN EUROPE

The types of regional²⁸³ and subregional economic integration initiatives may be divided into formal and informal arrangements.²⁸⁴ A *formal* integration initiative is an arrangement which imposes legal obligations on the contracting parties and creates institutions for the purpose of carrying out the purposes of the agreement. The most interesting example of such a project is the Central European Free Trade Agreement

²⁸² An effort is made to survey developments in PCA as well as in EA countries; any imbalance in coverage reflects availability of information rather than a judgment as to the relative importance of any particular initiative.

²⁸³ This article views the EU and the CIS as formal regional integration initiatives. However, the CIS is discussed *infra* Part IV.C.3, along with various subregional initiatives in the independent States of the former Soviet Union, in order to provide a more complete framework for analysis.

²⁸⁴ This simple functional definition does not take full account of the rich literature on international relations theory, but purports at least to be in line with it. See Kenneth W. Abbott & Duncan Snidal, *Mesoinstitutions: The Role of Formal Organizations in International Politics* 1, 3 (July 1995) (unpublished manuscript, on file with the authors: k-abbott@nwu.edu and snidal@chicago.edu) (analyzing mesoinstitutions which are "between the polar metaphors of the centralized state and decentralized anarchy"); Frank Garcia, *New Frontiers in International Trade: Decisionmaking and Dispute Resolution in the Free Trade Area of the Americas: An Essay in Trade Governance*, 18 MICH. J. INT'L L. 357, 359 (1997) (analyzing the design and operation of trade governance institutions). Abbott and Snidal analyze "combinations of . . . intermediate activities" which they characterize as "*facilitation and production*." Abbot & Snidal, *supra* at 4. They "focus on intermediate levels of centralization" in order to "better understand the multiple roles of institutions in promoting cooperation." *Id.* at 9. Their "mesoinstitutional analysis" highlights "other reasons for centralization" besides enforcement. *Id.* Facilitative organizations "differ from the pure model of decentralized cooperation because central institutions play a key role in achieving cooperation - often by improving information and communication. Such institutional arrangements enable states to solve problems among themselves without independent action by 'centralized' institutions. Their impact comes through reducing the transaction costs of reaching mutually beneficial agreements, as well as facilitating the self-enforcement of those agreements in the light of changing circumstances." *Id.* at 10. Productive organizations are "mesoinstitutions in which some significant operational activity is organized internationally rather than nationally. Sometimes states use IOs simply to achieve outcomes more efficiently; at other times centralized institutions perform functions that cannot be accomplished as effectively (or at all) at the national level. They operate in a way that is more or less independent of any individual state and goes beyond simply promoting decentralized cooperation." *Id.* at 11. See generally ROBERT O. KEOHANE, *AFTER HEGEMONY* (1984) (facilitative regimes); STEPHEN D. KRASNER, *INTERNATIONAL REGIMES* (1995); Charles Lipson, *Why are Some International Agreements Informal?*, 45 INT'L ORG. 495, 495-538 (Fall 1991); KENNETH A. OYE ED., *COOPERATION UNDER ANARCHY* (1986) (rationalist cooperation theory based on analysis of decentralized interaction); BETH V. YARBROUGH & ROBERT M. YARBROUGH, *COOPERATION AND GOVERNANCE IN INTERNATIONAL TRADE* (1992); ORAN R. YOUNG, *INTERNATIONAL GOVERNANCE* (1994).

described in Part IV.C.1 below, but there are other free trade areas²⁸⁵ and customs unions²⁸⁶ in Central and Eastern Europe as well. *Informal* subregional integration initiatives are cooperative arrangements involving creation of institutions for more general cooperative purposes (i.e. discussing common interests and undertaking joint projects), but which do not actually impose legal obligations on the members. Informal initiatives tend to bring together countries in a particular geographical region, such as the Black Sea Economic Cooperation, the Carpathian Border Region Economic Development Association, and the Council of Baltic Sea States, although some -- such as the Central European Initiative and the Economic Cooperation Organization -- are more inclusive, despite having a geographical component to their identity.

The designations *formal* and *informal* do not necessarily correspond to a particular governance structure. Thus, the distinction does not mean that formal initiatives are necessarily supranational in nature, and informal ones are intergovernmental. In fact, nearly all of the developments considered below have an intergovernmental character. They can be understood as largely facilitative mesoinstitutions²⁸⁷ that have been "created merely to facilitate the parties' integration goals," and are not "actually empowered to produce substantive integration results in forms such as new norms, dispute resolution decisions, and harmonization legislation."²⁸⁸

C. FORMAL INTEGRATION INITIATIVES

1. Central European Free Trade Area

The prime example of viable sub-regional economic integration in Central/Eastern Europe is the Central European Free Trade Area (CEFTA), which has been in effect since 1 March 1993.²⁸⁹ The formation of CEFTA

²⁸⁵ See *infra* note 328 regarding the Baltic States' free trade agreements for both industrial and agricultural goods.

²⁸⁶ For example, the Czech Republic and Slovakia have formed a customs union. OMRI, *supra* note 13, Sept. 6, 1995. There are also, at least on paper, customs unions within the CIS framework (see *infra* Parts IV.C.3.c, IV.C.3.d and Part IV.C.4). Also, Moldova and Ukraine signed a customs union agreement on Mar. 11, 1997. OMRI, *supra* note 13, Mar. 12, 1997 ("At a press conference . . . the two presidents said the customs union will be totally different from that between Russia and Belarus, because it will be based on full equality."). Finally, the Baltic States are working towards establishing a customs union among themselves. See *infra* note 329.

²⁸⁷ Abbot & Snidal, *supra* note 284.

²⁸⁸ Garcia, *supra* note 284, at 360.

²⁸⁹ See Central European Free Trade Agreement, Dec. 21, 1992, Czech Republic-Hungary-Poland-Slovakia, 34 I.L.M. 3 (Jan. 1995) [hereinafter CEFTA Agreement]. The proposal to establish a free trade area was made at the Visegrád Summit in Feb. 1991, Delia Meth-Cohn and Greg Grandsen, *Building Bridges*, BUS. CENT. EUR., July/Aug. 1995, at 9, and subsequently discussed at the Cracow Summit in Oct. 1991. See Vachudova, *supra* note 127, at 40. On Nov. 30, 1991, the ministers responsible for international economic cooperation in the Visegrád countries met in Warsaw and "issued

"expressed [the] will to stop the *disintegration* of the links between their economies and [the] trust in the beneficial influence of strengthened cooperation on the economic growth and welfare" of the members' economies.²⁹⁰ The economic and political importance of CEFTA in East-West European integration is growing and should not be underestimated, despite the fact that it is a remarkably weak organization, both substantively and institutionally.

The founding members of CEFTA were Czechoslovakia (now the Czech and Slovak Republics), Hungary, and Poland.²⁹¹ In 1996, Slovenia became the fifth member of CEFTA, and the first new entrant.²⁹² This accession was especially significant because, in 1994, Slovenia had scorned CEFTA as "not dynamic enough."²⁹³ Slovenia's decision to participate reflects the improved internal dynamics of CEFTA, and reveals Central and East European perceptions both of the advantages of participation in a subregional integration initiative, and of the diminishing likelihood of quick accession to the EU. Romania became the sixth CEFTA member in 1997,²⁹⁴ bringing the size of the market up to 67 million people.²⁹⁵

Today, CEFTA is poised to undergo further geographical expansion.²⁹⁶ The CEFTA members decided in September 1997 to launch

a memorandum reaffirming the goal of creating a free trade zone, including an appendix outlining the scope and the general provisions of the agreement to be negotiated." Pro Memoria (Nov. 30, 1991), *quoted in* Vachudova, *supra* note 127. For an evolutionary overview of CEFTA's early years, see Meth-Cohn & Grandsen, *supra*. See also, Sandor Richter, *European Integration: The CEFTA and the Europe Agreements*, WIIW RESEARCH REPORTS, No. 237 (Vienna, May, 1997). Information, albeit largely unofficial, is finally becoming available on line. See, e.g., Website of the "Jozef Stefan" Institute <<http://www.ijs.si/cefta/eng/index.html-12>> [hereinafter CEFTA Website]; Central and Eastern Europe Business Information Center <<http://www.itaiep.doc.gov/eebic/ceebic.htm>> [hereinafter EEBIC Website].

²⁹⁰ Ryszard Lawniczak, *Sub-Regional versus Pan European Free Trade of the CEECs* 139, 139, in FINN LAURSEN & SØREN RIISHØJ, *THE EU AND CENTRAL EUROPE: STATUS AND PROSPECTS* (1996).

²⁹¹ Victor Gomez, *Despite CEFTA, Trade Within Eastern Europe Isn't Too Neighborly*, THE BUDAPEST SUN, Apr. 28-May 4, 1994, at 8 (noting that CEFTA "aimed at creating a 60 million person market").

²⁹² Slovenia concluded accession agreements with the existing CEFTA member states in Nov. 1995, OMRI, *supra* note 13, Nov. 27, 1995, and became a member on Jan. 1, 1996. CEFTA Website, *supra* note 289.

²⁹³ Victor Gomez, *Regional Trade Integration*, THE BUDAPEST SUN, May 5-11, 1994, at 1 (quoting a Slovene diplomat). Slovenia tried to circumvent the multilateral approach by concluding bilateral trade agreements with each of the CEFTA member countries. *Id.*

²⁹⁴ The accession agreement was signed on Apr. 12, 1997, RFE/RL NEWSLINE, *supra* note 41, Apr. 14, 1997, and entered into effect on July 1, 1997, RFE/RL NEWSLINE, *supra* note 41, July 2, 1997.

²⁹⁵ *Central European Free Trade Agreement Creates \$240 Billion Market of 67 Million People*, EEBIC Website, *supra* note 289.

²⁹⁶ In November 1994, on the occasion of the Poznan Summit, the Visegrád Group of countries agreed on the future expansion of CEFTA to include other Central European countries, provided that they are members of the World Trade Organization, have concluded an association agreement with the EU, and sign bilateral agreements with all existing CEFTA member states. *Declaration of Prime Ministers of the CEFTA Countries* (Poznan, Nov. 25, 1994) (on file with author) [hereinafter Poznan Summit Declaration]. The rules of accession were amended on the occasion of the Brno Summit. See *Declaration of Prime Ministers of the CEFTA Countries* (Brno, Sept. 11, 1995) (on file with author).

formal negotiations with Bulgaria, which is expected to become a member in 1998.²⁹⁷ There is strong support for allowing the Baltic States to join, once they fulfill all the accession criteria.²⁹⁸ Ukraine has reached a basic agreement with CEFTA's members regarding "a plan for Ukraine's entry into the organization, but still must fulfill any prerequisites."²⁹⁹

The CEFTA Agreement, which provides for the gradual establishment of a free trade area, is modeled closely on the standard EA format, which in turn is patterned after the EC Treaty. Thus, CEFTA is a horizontal extension at subregional level of the regime established by the EAs, which in turn replicate the basic structure of the EC Treaty.³⁰⁰ And yet, the CEFTA Agreement is more like the EAs than it is like the EC Treaty, inasmuch as it more closely mimics the scope and depth of the EAs.³⁰¹

a. CEFTA's Institutional Structure

CEFTA has a weak intergovernmental institutional structure. There is no general legislative competence, nor is there any judicial authority empowered to make binding interpretations of the Agreement. CEFTA's sole institution, the Joint Committee (JC), is charged with the task of supervising and administering the implementation of the CEFTA Agreement.³⁰² It has very limited decisional capacity.³⁰³ Thus, the JC

[hereinafter Brno Summit Declaration]. It is no longer essential that the applicant have concluded free trade agreements with all CEFTA members. Richter, *supra* note 289, at 8.

²⁹⁷ *Conclusions of the Summit of the Prime Ministers of the CEFTA Countries* (Potrero, Sept. 12-13, 1997) [hereinafter Potrero Summit Declaration], CEFTA Website, *supra* note 289.

²⁹⁸ Slovak Prime Minister Meciar has advocated broadening CEFTA membership even further. *Association Councils Stress Positive*, in EUR. DIALOGUE, *supra* note 41 (July/Aug. 1997). For example, he suggested in 1996 that not only the Baltic States, but also Ukraine and the Balkans (including all ex-Yugoslav countries) be considered for membership. HUNG. REP., *supra* note 41, Sept. 16, 1996. Bulgaria, Croatia, Estonia, Latvia, Lithuania, Macedonia and Ukraine have all expressed an interest in joining CEFTA. CEFTA Website, *supra* note 289. For a brief overview of the status of potential CEFTA member countries' applications to the World Trade Organization, see *infra* note 440.

²⁹⁹ RFE/RL NEWSLINE, *supra* note 41, Sept. 15, 1997.

³⁰⁰ Certain key language, e.g. pertaining to the basic rules governing movement of goods, state monopolies, state aids, and competition, is identical throughout the entire web of treaties.

³⁰¹ Strictly speaking, CEFTA's scope is narrower than that of the EAs, since the latter not only establish a free trade area, but provide for political dialogue and extensive cooperation as well.

³⁰² The Joint Committee is composed of representatives of each member state. CEFTA Agreement, *supra* note 289, art. 34(1). The CEFTA member states themselves must ensure that provisions of the CEFTA Agreement are "effectively and harmoniously applied." *Id.* art. 16(2). The JC has broad competence to consider trade liberalization and trade protection measures. See *id.* arts. 13(2), 14, 27-28, 33. Its most sensitive and important role is in connection with the application of safeguard measures. *Id.* art. 31. CEFTA member states are obliged to notify the JC of certain events. *Id.* arts. 13(2), 20(1), 21(3), 23(4), 28(6), 31(3).

³⁰³ The JC is limited both by the scope of its decisional authority, *id.*, arts. 10(2), 23-24, and by the requirement that it take decisions by common agreement on certain matters, *id.* art. 34. Beyond this, the JC only has the power to make recommendations. *Id.* While the JC has jurisdiction to decide some sensitive disputes, its effectiveness is severely constrained by the unanimity requirement: One member state can hardly be expected to be in common agreement with a complaint brought against its own

mainly provides a forum where member states can exchange and discuss information relevant to proper implementation of the Agreement, although members have also demonstrated a willingness to discuss within the CEFTA institutional framework some matters that clearly fall outside CEFTA's competence.³⁰⁴ The JC is also designated as the forum for discussing further integration among CEFTA member states: It is charged with considering further liberalization of trade among the member states, as appropriate, and proposing amendments to the CEFTA Agreement.³⁰⁵

The key to CEFTA's institutional weakness lies more in the lack of supranational decision-making power than in the limited scope within which the JC may take decisions. And yet this weakness is intentional.³⁰⁶ The CEECs are fond of their newly-acquired independence, and reluctant to yield any bit of it, especially to an organization that reeks of the COMECON and second-class European citizenship. During the first years of CEFTA's operation, the member states were circumspect about raising their common voice, and cautiously avoided expanding the scope of their cooperation, largely because each of them was preoccupied with asserting itself individually *vis-à-vis* the EU and trying to distance itself from the pack of associated CEECs in the race to accession. The Visegrád countries have

practices.

As the history of the EU shows, however, deeper integration is often marked by a willingness over time to yield to decision-making by qualified majority. No such tendencies are apparent at this early stage of Central European integration. However, the member states acknowledged this weakness in their Record of Understandings, where they "consider that an arbitration procedure could be envisaged for disputes which cannot be settled through consultations between the Parties concerned or in the Joint Committee. Such a possibility may be further examined in the Joint Committee." *Id.*, Record of Understandings, Clause 1, para. 7. To date, however, no concrete steps have been taken in this direction.

³⁰⁴ Notwithstanding the fact that trade between the Czech Republic and Slovakia is expressly excluded from the scope of CEFTA, these two countries discussed their dispute over customs duties and import surcharges on foreign cars in the framework of the CEFTA Brno Summit in September 1995. Brno Summit Declaration, *supra* note 296. The fact that these discussions took place at the CEFTA Summit may merely reflect considerations of convenience, but it also may reflect growing comfort with (or even confidence in) the CEFTA institutional structure.

³⁰⁵ CEFTA Agreement, *supra* note 289, art. 39.

³⁰⁶ As early as 1991 and 1992, Czech and Hungarian leaders made it clear that they were not seeking to use the Visegrád cooperation as a "framework for advocating the creation of new bureaucracies and institutions." Vachudova, *supra* note 127, at 41. A Czech minister reiterated in 1995 that "[w]e don't want to create any kind of institution." Timea Spitkova, *Visegrád's Usefulness in Doubt*, PRAGUE POST, June 7-13, 1995, at 5 ("The Czech Republic again snubbed efforts to create institutional links among the Visegrád Four countries . . ."). Vachudova argues that the "Hungarians see Visegrad above all as a process, not as an organization." Vachudova, *supra* note 127, at 42. Polish President Walensa, by way of contrast, expressed the view early on that "limited institutionalization would be useful." *Id.* at 41. See also Richter, *supra* note 289, at 20 ("The fear of the institutionalization of regional cooperation is obvious from the fact that CEFTA has no organization, or headquarters, or any paid employees").

The JC has discussed CEFTA's organizational structure and expressed its opinion that no permanent institution is needed yet, but it is considering ways to improve the existing structure. *Agreed Minutes on the Session of the Central European Free Trade Agreement Joint Committee* (Bratislava, June 5-6, 1996) (on file with author) [hereinafter Bratislava Summit Declaration].

been especially sensitive to being lumped together and treated as an amorphous mass by the EU.³⁰⁷ This aversion has ebbed somewhat since CEFTA's economic success has become an established fact.³⁰⁸

In a dramatic proclamation, Hungarian Prime Minister Horn endorsed the political component of the economic cooperation by calling on other CEFTA countries -- all of whom "know exactly what they do not want cooperation to be like in the future" -- to base their relations not merely on "denial of the decades past, but rather [on] the kind of co-operation which meets with the interests and ambitions of free, independent states."³⁰⁹ It is this growing willingness to cooperate for mutual gain -- rather than formal organizational strength -- that accounts for CEFTA's growing importance in the region. It should not escape notice that the current members of CEFTA are all EA countries, as are the countries most likely to join CEFTA in the near future. CEFTA should thus be seen as an important voice of the first tier of the associated countries *vis-à-vis* the EU.

³⁰⁷ The staunchest opponents to Visegrád cooperation have been the Czechs. Prime Minister Klaus heavily criticized CEFTA from the outset, arguing that the Visegrád cooperation "framework was imposed on the countries concerned by Western states in order to stall their entry into Western institutions." Vachudova, *supra* note 127, at 41. President Havel largely agreed with Klaus' assessment, but Polish Minister of Foreign Affairs Skubiszewski did not; he retorted that "Whoever says the West authored [Visegrád] is wrong." *Id.* at 42. In Vachudova's 1993 view, "the Poles . . . see it as something intrinsically good; the Czechs see it as something to be avoided; but the Hungarians take a nonideological view that emphasizes the practical benefits to be gained." *Id.* See also Kolankiewicz, *supra* note 2, at 483-84 (noting the Czech "minimalist" strategy and fear that "the Visegrad ante-room [might be] transformed into a permanent residence"); Bugge, *supra* note 168, at 4. But see *id.* at 4 (noting in 1997 that the "Czech Republic has had to abandon its initial scepticism towards the CEFTA" especially in light of positive trade results).

³⁰⁸ According to a July 1996 report prepared by the Nomura Research Institute ("NRI"), the "turning point in inter-regional trade came in 1994." Malgorzata Halaba, *Trade Levels among Eastern European Countries Rising*, WARSAW BUS. J., Aug. 26 - Sept. 1, 1996, at 5 (quoting NRI report) [hereinafter NRI Report]. The NRI Report documented significant rises in interregional trade for the Visegrád countries during the 1994-1995 period, and predicted that interregional trade "ought to become increasingly important." *Id.* See also *Cooperation with CEFTA Countries*, POLISH FOREIGN TRADE, Oct. 95, at 6-7; *Agreed Minutes on the Session of the Central European Free Trade Area Joint Committee* (Warsaw, Aug. 17-18, 1995) (on file with author) [hereinafter Warsaw Summit Declaration] (noting the "significant rise in mutual trade, recorded in 1994 and the first months of 1995"); *Agreed Minutes on the Extraordinary Session of the Central European Free Trade Area Joint Committee* (Warsaw, Dec. 21, 1995) (on file with author) (noting the "almost 100% increase of mutual trade reached" since CEFTA's effective date); Bratislava Summit Declaration, *supra* note 306 (noting the "significant growth in mutual trade, recorded in 1995 and in the first months of 1996"). Of course, not all improvement in subregional trade can be attributed to CEFTA, since the "improving economic situation in the Visegrád Four has played a role." *Backyard Trade*, THE BUDAPEST SUN, May 12-18, 1994, at 4.

By "success" I do not mean to suggest that trade among CEFTA countries is replacing trade with EU and other countries, but rather that trade among CEFTA members is growing. See generally, NRI Report, *supra* (showing that Czech and Polish trade in 1994 and 1995 shifted increasingly away from the EU and towards interregional trade); Bugge, *supra* note 168, at 4 (quoting 1997 Czech sources and noting that Czech "trade within CEFTA is developing positively in stark contrast to the growing deficit in Czech trade with the EU.").

³⁰⁹ Gyula Horn, *CEFTA Works*, BUS. CENT. EUR.: THE ANNUAL, Dec. 1995, at 18.

b. CEFTA's Substantive Provisions

The CEFTA Agreement provides for the gradual creation of a free trade area³¹⁰ for industrial goods by 1 January 2001.³¹¹ It does not, however, create a free trade area for trade in agricultural products.³¹² CEFTA's rules on free movement of goods are supplemented by a wide range of trade-related measures,³¹³ all of which can be traced to similar (or identical) provisions found in the EC Treaty and in the EAs. The CEFTA Agreement

³¹⁰ The legal format of the CEFTA free trade area for industrial products is familiar to anyone who has read the EC Treaty or an EA. In essence, the CEFTA Agreement abolishes existing (and prohibits the introduction of new) customs duties on imports and exports (including measures of a fiscal nature and those having equivalent effect to customs duties). CEFTA Agreement, *supra* note 289, arts. 3-7. Further, it abolishes existing (and prohibits the introduction of any new) quantitative restrictions on imports and exports, including measures having equivalent effect. *Id.* arts. 8-9. Member states must refrain from any discriminatory measure or practice of an internal fiscal nature. *Id.* art. 17. Member states are also entitled to the standard general and security exceptions to the free movement of goods. *Id.* arts. 18-19.

The CEFTA Agreement also provides for common rules of origin. *Id.* Protocol 7. The definition of "originating products" contained in Protocol 7 and the procedures established therein are very similar to those found in the EAs. Annex VIII to Protocol 7 calls upon the member countries at a session of the Joint Committee "in the near future" to examine the question of the treatment of materials originating in other member states (i.e. multilateral cumulation) and the further question of the treatment of materials originating in European Free Trade Area (EFTA) or in the EC. This crucial issue is discussed further, *infra* Part IV.F.1.

No instances of interpretation of the CEFTA Agreement's basic provisions on free movement of goods have come to light.

³¹¹ However, CEFTA countries have negotiated almost continuously since concluding the CEFTA Agreement in December 1992 "to start immediate negotiations on speeding up liberalization." Meth-Cohn & Grandsen, *supra* note 289, at 9. As a result of the various agreements to accelerate dismantling of tariffs, CEFTA achieved free trade 98% of industrial goods on January 1, 1997, rather than by January 1, 2001 (or 2002 for automotive goods) as originally planned. Christopher Serres, *CEFTA Leaves Farmers Out in the Cold*, WARSAW BUS. J., Sept. 23-29, 1996, at 4. Richter notes that "specific reductions of trade barriers are [made] on a bilateral basis." Richter, *supra* note 289, at 3.

³¹² The CEFTA Agreement establishes a network of bilateral concessions and calls upon the member states to "examine the possibilities of granting each other further concessions." CEFTA Agreement, *supra* note 289, art. 12(2). It also requires each member state to apply its sanitary and phytosanitary regulations in a non-discriminatory manner. *Id.* art. 15. Liberalization in the agricultural sector has been agonizingly slow. The member states agreed at the Poznan Summit on Nov. 25, 1994 to seek reductions in duties on agricultural goods. Meth-Cohn & Grandsen, *supra* note 289, at 9. In August and December 1995, CEFTA member countries signed protocols liberalizing agricultural trade. *CEFTA's Development*, CEFTA Website, *supra* note 289 (visited Jan. 28, 1998).

³¹³ For example, the CEFTA Agreement, *supra* note 289, contains provisions on: state monopolies of a commercial character, art. 20; competition, art. 22; state aids, art. 23; procurement, art. 24; intellectual property, art. 25 (member states must grant and ensure protection of intellectual rights on a non-discriminatory basis and, within a stated period, raise the level of protection to that determined by certain designated multilateral agreements); dumping, art. 26; safeguard measures, art. 27; structural adjustment measures, art. 28; and shortages, art. 29. The permitted safeguard measures are "restricted with regard to their extent and to their duration to what is strictly necessary in order to rectify the situation giving rise to their application and shall not be in excess of the injury caused by the practice or the difficulty in question. Priority shall be given to such measures as will least disturb the functioning of the Agreement. The measures taken by a [member state] against an action or an omission of another [member state] may only affect the trade with that [member state]." *Id.* art. 31(5). In addition, any safeguard measures taken shall be discussed within the JC, with a view to "their relaxation as soon as possible, or abolition when conditions no longer justify their maintenance." *Id.* art. 31(6).

also contains provisions relating to payments,³¹⁴ which have analogues in the EAs and in the EC Treaty.³¹⁵ However, compared to the EC Treaty, and even to the EAs, there are huge gaps in CEFTA's coverage.³¹⁶

CEFTA has one major, and one minor structural weakness. The major structural weakness is that CEFTA lacks a central mechanism for eliminating non-tariff barriers.³¹⁷ Its minor structural weakness is that the CEFTA Agreement contains no provision calling for approximation of laws.³¹⁸

Despite all its limitations and weaknesses, CEFTA is a success story. Encouraging economic results have led CEFTA member states to talk seriously about expanding the scope of their cooperation, as well as their membership. Proposals made in the context of CEFTA summits suggest that at least some CEFTA member states are enthusiastic about the benefits and optimistic about the future of economic integration in Central and Eastern Europe,³¹⁹ although actual progress has been slow.³²⁰ CEFTA

³¹⁴ First, CEFTA member states must permit payments relating to trade in goods to be made in freely convertible currency without restriction. CEFTA Agreement, *supra* note 289, art. 21. However, the CEFTA member states have reserved the right to apply exchange restrictions until such time as they are subject to Article VIII of the Articles of Agreement of the International Monetary Fund. Articles of Agreement of the International Monetary Fund, 1947, 60 Stat. 1401, T.I.A.S. 1501, 2 U.N.T.S. 39.

Second, CEFTA member states shall endeavor to avoid imposing restrictive measures relating to balance of payments difficulties. CEFTA agreement, *supra* note 289, art. 32. However, they may do so under the conditions established in the General Agreement on Tariffs and Trade. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194 [hereinafter GATT].

³¹⁵ See, e.g., Hungarian EA, *supra* note 42, arts. 59 (payments in freely convertible currency) and art. 60(2) (foreign exchange restrictions); EC Treaty, *supra* note 22, arts. 67-73h.

³¹⁶ CEFTA's competence does not extend to free movement of persons, freedom to provide services, or freedom of establishment; neither does it cover matters such as investments, industrial policy, social policy, or economic policy. Also implicitly excluded are the transport, energy and telecommunications sectors.

³¹⁷ See Meth-Cohn & Grandsen, *supra* note 289, at 12. See also *id.* at 9 ("major obstacle is . . . CEFTA's inability to make sure its members stick to the spirit of free trade now that some of its companies are competing on quality as well as on price"). Developments in the region demonstrate that CEFTA member states have been creative in finding ways to protect domestic producers against cheaper imports from other CEFTA countries. Hungary, for example, introduced a system of import monitoring, under which the importer must send all documents to the industry ministry, which then gives permission for the goods to pass through customs. *Id.* at 12.

³¹⁸ This weakness is minor, since each CEFTA country is already bound under its respective EA with the EC to approximate its legislation to that of the EU. The CEFTA Agreement establishes a standstill procedure under which member states must notify one another of draft technical regulations and wait three months before adopting them (except in urgent cases), in order to give the other member states time to comment on and consult regarding them. CEFTA Agreement, *supra* note 289, Annex V. However, no standstill period is required for a draft technical regulation which "merely transposes the full text of an international or European standard." *Id.* Annex V, art. 2(2).

³¹⁹ For example, at the Sept. 1995 Brno Summit, CEFTA member states agreed *inter alia* to speed up talks on certifying industrial and agricultural products (including mutual recognition of certificates); to simplify and standardize CEFTA's rules of origin, and to bring them into line with those of the EU; and to consider expanding CEFTA activities to include trade in services and the free movement of capital. The Polish government, which prepared the proposal on capital, went so far as to suggest setting up a regional trade and investment bank. *CEFTA Members Agree to Add Slovenia; Bulgaria, Romania Likely to Join Next*, BNA INT'L TRADE REP., Sept. 20, 1995, at 1582-83. According to a

contains a limited "evolutionary clause" under which a member state may propose adding new areas to CEFTA's competence.³²¹

One significant feature of CEFTA is that it does "not prevent the maintenance or establishment of customs unions, free trade areas or arrangements for frontier trade to the extent that these do not negatively affect the [CEFTA] trade regime and in particular [its] rules of origin."³²² CEFTA, thus, expressly foresees that its member states will enter into bilateral trade agreements with other countries.³²³ This criss-cross pattern of bilateral linkages may actually impel further integration within CEFTA itself, since the member states declared themselves ready "to examine in the Joint Committee the possibility of extending to each other any concessions they grant or will grant to third countries with which they conclude a Free Trade Agreement or other similar agreement. . ."³²⁴ Another dynamic element of the CEFTA structure is that it does not hinder its member states from seeking closer integration with each other.³²⁵ Thus, for example, the Czech Republic and Poland deepened their cooperation by concluding a bilateral agreement on cooperation in agriculture and the food industry in August 1995.³²⁶

Subregional success, measured in both economic and political terms, ensures that CEFTA is not only here to stay, but is likely to increase in regional importance in the coming years. The role of CEFTA has become more complex and less certain since four of its members--the Czech Republic, Hungary, Poland and Slovenia--were placed on the enlargement "fast-track" by the Commission's July 1997 decision to commence

statement by Hungarian Prime Minister Horn, there is some interest in broadening cooperation to include transport, telecommunications, energy, infrastructure, and privatization. Horn has further advocated "more meaningful and pragmatic cooperation" between institutions and officials. Horn, *supra* note 309, at 18.

³²⁰ Completion of the internal market has been held up by Slovenia's reluctance to lower agricultural trade barriers, and by Poland's imposition of import duties on steel. *Month in Review: Politics and Economics*, BUS. CENT. EUR., Oct. 1997, at 17. See also Portoro Summit Declaration, *supra* note 297 (finding that "the functioning of CEFTA is less dynamic after the first successful years," and agreeing to move ahead in respect to: "free movement of capital, common interpretation of certain articles of the Agreement, liberalisation of trade in services or in the field of mutual recognition of certificates and test results for agricultural and industrial products.").

³²¹ CEFTA Agreement, *supra* note 289, art. 33(1) (a member state that "considers that it would be useful in the interest of the Parties to develop and deepen the relations established by the Agreement by extending them to fields not covered thereby [shall] submit a reasoned request to the other [member states which] may instruct the Joint Committee to examine such a request and, where appropriate, to make recommendations, particularly with a view to opening negotiations.").

³²² *Id.*, art. 36(2).

³²³ As a matter of fact, CEFTA member states have concluded numerous free trade agreements with other European countries. See the discussion of interregional links *infra* in notes 347-50.

³²⁴ CEFTA Agreement, *supra* note 289, Record of Understandings, Cl. 1.

³²⁵ Since the Czech Republic and Slovakia have formed a customs union between themselves, *supra* note 286, the CEFTA Agreement does not govern trade between them. *Id.*, art. 36(1).

³²⁶ Polish Gov't Website, *supra* note 176. They were "forced" to do this outside the CEFTA framework because of Hungarian intransigence.

accession negotiations with them ahead of Slovakia (also a CEFTA member) and Bulgaria (next in line to join CEFTA). CEFTA may be transitional in nature for some members since they could drop out upon accession to the EU. But the enlargement process will be slow, if past experience is any guide, and not all present or likely future CEFTA members face reasonable prospects of joining the EU. This is all the more reason to build on CEFTA's success.

2. Baltic States

The Baltic States have been moving towards closer integration among themselves, in addition to seeking closer ties with CEFTA and other CEECs. For example, they established a Baltic Council of Ministers,³²⁷ and have concluded free trade agreements for both industrial and agricultural goods.³²⁸ Recent joint declarations have called for intensifying cooperation,³²⁹ which includes working towards establishing a customs union.³³⁰ However, not all sailing is smooth. For example, conflict often arises among the Baltic States in the context of their relations with the EU.³³¹ This tension is likely to increase, now that Estonia has been placed on the enlargement "fast track" by the Commission's July 1997 decision to commence accession negotiation with Estonia, but not with Latvia or

³²⁷ *Communique of the Council of the Baltic Sea States, Fourth Ministerial Session* (Gdańsk, May 18-19, 1995) [hereinafter CBSS Gdańsk Communique], point 17, Baltinfo Website <<http://www.baltinfo.org/>> [hereinafter Baltinfo Website].

³²⁸ OMRI, *supra* note 13, Jan. 3, 1997. The free trade agreement covering industrial goods was concluded on Sept. 13, 1993, and entered into effect in Apr. 1994, whereas the one covering agricultural trade was signed on Aug. 15, 1996, OMRI, *supra* note 13, Aug. 16, 1996, and entered into effect on Jan. 1, 1997. OMRI, *supra* note 13, Jan. 3, 1997. See generally Lawniczak, *supra* note 290, at 151-54 (noting slow progress in real terms).

³²⁹ EUR. DIALOGUE, *supra* note 41 (May/June 1997). See also OMRI, *supra* note 13, Nov. 27, 1996; OMRI, *supra* note 13, Feb. 7, 1997 (Council of Ministers signed five documents directed at further liberalization of economic relations).

³³⁰ RFE/RL NEWSLINE, *supra* note 41, May 27, 1997. There was some concern that Estonia would lose interest in the proposed customs union after it was placed on the EEU's accession fast-track ahead of its Baltic neighbors. RFE/RL NEWSLINE, *supra* note 41, Sept. 10, 1997. They have moved forward somewhat, by agreeing to "abolish non-tariff customs barriers" and by signing a "resolution on establishing a joint economic area that would allow the free movement of labor and services and the creation of a joint border region." RFE/RL NEWSLINE, *supra* note 41, Nov. 21, 1997.

³³¹ See Lawniczak, *supra* note 290, at 152 (documenting the rivalries and conflicts) and at 153 (noting the "paradox . . . that it is the outside western pressure that is the driving force for sub-regional cooperation"). For example, tensions came to a head in mid-1997, when the EU was preparing to announce which EA countries would be invited to commence accession negotiations. While Baltic foreign ministers urged the EU to start negotiations with all three Baltic States simultaneously, RFE/RL NEWSLINE, *supra* note 41, June 2, 1997, Baltic prime ministers were unable to agree on a joint declaration on joining the EU. Estonia and Latvia favored "a statement saying that even if only one Baltic country were admitted, the other two would still benefit from its membership," while "Lithuania . . . wanted the declaration to stress that the Baltic States favor entering the EU together." RFE/RL NEWSLINE, *supra* note 41, June 17, 1997.

Lithuania.³³²

3. Commonwealth of Independent States

This overview of the current situation in those republics of the former Soviet Union that have joined the Commonwealth of Independent States (CIS)³³³ is surely incomplete, owing to the pace of developments and the difficulties of obtaining accurate information about developments in the region. The following should be viewed as a preliminary look at some of the proposed structures within the CIS, rather than an analysis of actual practice, and an illustration of some parallels between the structure envisaged by the CIS and those present in the EU.

a. Charter of the Commonwealth of Independent States

The scope of the Charter of the Commonwealth of Independent States (CIS Charter)³³⁴ is comprehensive.³³⁵ The CIS Charter expressly declares the intergovernmental nature of the CIS,³³⁶ which must be borne in mind when considering the profusion of institutions that the CIS Charter

³³² See, e.g. RFE/RL Newline, Aug. 28, 1997 (Latvian Foreign Minister Birkauskas asserted that "Estonian diplomats are advertising their country's success more 'aggressively' than their Latvian counterparts").

³³³ See *supra* note 64 (regarding conclusion of the CIS Agreement and related declarations). The Russian Duma voted on Mar. 15, 1996 to repudiate the dissolution of and to restore the former Soviet Union. OMRI, *supra* note 13, Mar. 20, 1996. The Federation Council (i.e. Russia's upper house) asked the Duma (i.e. lower house) to reconsider this decision, noting that it could "create difficulties in achieving the 'noble goal' of . . . CIS integration." *Id.*

³³⁴ The Charter of the Commonwealth of Independent States was signed by all twelve members of the CIS (i.e. Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan) during the course of 1993, and entered into effect in 1994. Commonwealth of Independent States: Charter, June 22, 1993, 34 I.L.M. 1279 (1995) [hereinafter CIS Charter]. This agreement establishes -- at least on paper -- an extensive framework of organs and institutions for the CIS and contains a broad range of commitments. It recognizes that some countries may wish to participate fully in the Commonwealth, while others "willing to participate in certain kinds of activities . . . may join" as associate members. *Id.* art. 8. Ukraine exercised the option to become an associate member, but all other countries are full members.

³³⁵ The competence of the CIS is very broad: it covers cooperation in political, economic, ecological, humanitarian, defense, scientific, technological, and other areas. CIS Agreement, *supra* note 64, art. 2. The member states have agreed to cooperate with regard to human rights; foreign policy; formation and development of a common economic space; customs policy; transport; communications; health care; education; culture; protection of the environment; sports; social policy and immigration; defense policy and the protection of external frontiers; and the struggle against organized crime. *Id.* arts. 2-6. The "common economic space" shall be formed on the basis of market relations and of free movement of goods, services, capital, and labor. *Id.* art. 19. Cooperation "in economic and social fields" is defined further to include coordination of credit and fiscal policy; encouragement and mutual protection of investments; promotion of standardization and certification of industrial goods; and protection of intellectual property. *Id.*

³³⁶ The Commonwealth shall be "based on sovereign equality of its members" and "shall not be a state and shall not be supranational." CIS Charter, *supra* note 334, art. 1.

calls into existence,³³⁷ among them an Economic Court.³³⁸ The CIS Charter contains no binding dispute resolution procedure, except for such disputes as fall within the jurisdiction of the Economic Court.³³⁹ Nor do CIS institutions have any legislative competence.

The CIS Charter envisages law as one of the principal means of integration. Article 20 calls upon the member states to "cooperate in the field of law, in particular, by means of concluding multilateral and bilateral agreements on rendering legal assistance and shall enhance rapprochement of national legislations."³⁴⁰ As further explained below, much of the

³³⁷ The principal executive organs of the CIS are the Council of the Heads of State and the Council of the Heads of Government. *Id.* at ch. VI (describing these organizations' functions). The former is the "supreme organ . . . on the issues of defence and guarding of the external frontiers," and takes decisions on "the principal issues relating to the activity of the member states in the field of their mutual interests." *Id.* arts. 14, 21. The latter, on the other hand, is the organ in which the "executive power organs of member states" meet to "coordinate cooperation" in military, economic, social, and other spheres of mutual interest. Both of these Councils take their decisions on the basis of consensus. *Id.* art. 22. As a matter of fact, these organs were actually established by the Minsk Agreement and the Alma-Ata Declaration, both *supra* note 64.

The CIS Charter also calls for the establishment of an Interparliamentary Assembly. CIS Charter, *supra* note 334, arts. 36-37. The Assembly (based in St. Petersburg) consists of parliamentary delegations from the member states. Its task is to deliberate, "to discuss questions of cooperation, and to elaborate joint proposals in the sphere of activity of national parliaments." *Id.* art. 36. Its seventh session (in St. Petersburg in February 1996) outlined plans for more cooperation among the member states. Russian President Yeltsin and Duma Chairman Seleznev stressed the need for the Assembly to become a viable forum for inter-CIS relations. OMRI, *supra* note 13, Feb. 19, 1996. The Assembly has been active. For example, it has adopted resolutions concerning the agreement to normalize relations between Moldova and the breakaway Transdniestrian region and calling for implementation of a decision to broaden the mandate of the CIS peacekeeping force in Abkhazia. RFE/RL NEWSLINE, *supra* note 41, June 10, 1997.

Some 80 supranational organs have been created since 1991, "many of which are duplicative and wasteful." OMRI, *supra* note 13, Mar. 28, 1997. Therefore, the CIS foreign ministers "imposed a moratorium on creating new ones." *Id.*

³³⁸ The role of the Economic Court is to ensure that the economic obligations undertaken by the member states are observed. CIS Charter, *supra* note 334, art. 32. The Court shall have jurisdiction to settle disputes which arise "while the economic obligations are being executed," as well as other disputes referred to it by agreement of the member states." *Id.* It shall also have jurisdiction to "interpret the provisions of agreements and other acts of the Commonwealth on economic issues." *Id.* The Council of the Heads of State is instructed to adopt an Agreement on the Status of the Economic Court and governing Regulations. *See id.* A lack of information prevents assessment of the actual power or effectiveness of the Economic Court at this time.

³³⁹ The CIS Charter contains very weak dispute resolution provisions. In the case of conflicts "which are likely to entail the violation of human rights," the member states are obliged to "take all . . . possible measures to prevent" and to "render each other in assistance in settlement of" such conflicts. *Id.* art. 16. The member states are obliged to refrain from "actions . . . likely to cause losses to other member states," and "in good faith and in the spirit of cooperation do their utmost for fair and pacific settlement of their disputes by means of negotiations" or other appropriate procedure. *Id.* art. 17. If the member states are not able to resolve such a conflict between or among themselves, they may submit it to the Council of Heads of State. *Id.* The most far-reaching provision merely empowers the Council of the Heads of State, in case of a dispute which pose a threat to peace or security, to intervene at any time to *recommend* an appropriate *method* of resolving the dispute. *Id.* art. 18 (emphasis added).

³⁴⁰ *Id.* art. 20(1). Article 20(2) provides that "[s]hould a contradiction arise between the norms of national legislations of member states, governing the relations in the fields of joint activity, the member states shall conduct consultations and negotiations with the view of elaboration of proposals on elimination of the contradictions." *Id.* art. 20(2). An Agreement on Inter-Parliamentary Cooperation

cooperation within the CIS framework will take the form of law.³⁴¹

While remarkable on paper, the fact is that implementation of the CIS Charter has been minimal.³⁴² And yet, concrete steps have been and continue to be taken, such as the conclusion of the CIS Treaty on Creation of Economic Union³⁴³ and various measures in the security field.³⁴⁴

b. *CIS Treaty on Creation of Economic Union*

The CIS Treaty on Creation of Economic Union (CIS Economic Union Treaty) was signed in Moscow on 24 September 1993.³⁴⁵ This Treaty, like the CIS Charter, establishes an institutional framework and contains a broad range of commitments. However, the CIS Economic Union Treaty is not self-executing; like the CIS Charter, the Treaty only establishes a framework whose provisions require further implementation. And implementation has been very limited.³⁴⁶

The CIS Economic Union Treaty provides that the contracting

in the Legal Sphere was signed in Moscow on Feb. 27, 1992 by Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Turkmenistan and Ukraine. For an analysis see Buxbaum, *supra* note 49, at 126-27 and 134-35.

³⁴¹ At the seventh meeting of the CIS Interparliamentary Assembly in February 1996, Duma Chairman Seleznev indicated that the newly-elected Duma would "likely consider the coordination of legal codes among member states to be of utmost importance." OMRI, *supra* note 13, Feb. 19, 1996.

³⁴² See *infra* notes 377-78.

³⁴³ See *infra* text accompanying notes 345-63.

³⁴⁴ Not surprisingly, cooperation among CIS members in the security arena has been intense. However, this topic is beyond the scope of this article. See, e.g., OMRI, *supra* note 13, Apr. 5, 1996 (Dushanabe meeting to discuss cooperation in the fight against drugs and arms smuggling); RFE/RL NEWSLINE, *supra* note 41, Apr. 1, 1997 (agreement on creation of a CIS commission to mediate the conflicts in Transdniestria, Tajikistan, Abkhazia, and Nagorno-Karabakh); OMRI, *supra* note 13, Apr. 3, 1997 (foreign ministers' follow-up meeting to discuss May 1992 Tashkent Treaty on Collective Security); RFE/RL NEWSLINE, *supra* note 41, Apr. 24, 1997 (CIS-Chinese Border Agreement). However, even in this field, cooperation is "tenuous." OMRI, *supra* note 13, Mar. 28, 1997 (only 9 of the 12 CIS states formally attended March 1997 meeting of CIS defense ministers).

³⁴⁵ Commonwealth of Independent States: Treaty on Creation of Economic Union, Sept. 24, 1993, 34 I.L.M. 1298 [hereinafter CIS Economic Union Treaty]. All twelve members of the CIS joined the Economic Union Treaty, although Ukraine is only an associate member.

³⁴⁶ On Jan. 17, 1997, the CIS Heads of Government Council considered "17 proposed economic agreements but approved only nine of them." OMRI, *supra* note 13, Jan. 20, 1997. This meeting also considered an overall Concept for Integrated Economic Development, which envisages creating a single CIS, expanding the customs union, and integrating transport and energy systems. RFE/RL NEWSLINE, *supra* note 41, Apr. 3, 1997. See also OMRI, *supra* (proposals for "unified CIS trade, labor, transport, customs, and currency systems"). This Concept was formally "approved" by "8 of 12 countries," RFE/RL NEWSLINE, *supra* note 41, Apr. 3, 1997, but only Yeltsin actually signed it. RFE/RL NEWSLINE, *supra* note 41, Apr. 1, 1997. Azerbaijan, Georgia, Turkmenistan and Uzbekistan refused to support the Concept, and Ukraine insisted that it be submitted for further discussion. OMRI, *supra* note 13, Jan. 20, 1997. Further negotiations and modifications to the Concept have ensued. RFE/RL NEWSLINE, *supra* note 41, Apr. 3, 1997. At the Mar. 1997 CIS Summit, talk still focused on plans to create a "single economic space" which would include free trade zones, a vast customs union and integrated energy and transport systems." Timothy Heritage, *CIS Leaders Meet More Divided than United*, REUTER (Mar. 28, 1997), EEUROPE-NEWS-DIGEST <europe-news.request@hookup.net> [hereinafter EEUROPE-NEWS-DIG.].

parties shall "employ existing and create new joint executive and coordinating" organs.³⁴⁷ Like the CIS Charter, the CIS Economic Union Treaty calls for decisions to be taken on a consensus basis; unlike the former, the latter's provisions on dispute resolution are more concrete and far-reaching.³⁴⁸

The CIS Economic Union Treaty calls for the progressive establishment of a multilateral free trade association; a customs union; a common market of goods, services, capital, and labor; and a monetary union.³⁴⁹ The treaty states that there shall be "coordinated fiscal, budgetary, tax, pricing, foreign economic, customs and monetary policies; harmonized economic legislation . . . ; and common statistics."³⁵⁰ There shall be a mechanism for anti-monopoly regulation,³⁵¹ and various coordinated policies.³⁵² Trade among contracting parties shall be on a non-discriminatory basis,³⁵³ and enterprises of one contracting party residing in another one and engaged in economic activities there shall be entitled to national treatment.³⁵⁴ The CIS Economic Union Treaty contains a broad chapter on "Social Policy," which includes visa-free movement of citizens throughout the territory of the Economic Union,³⁵⁵ non-discriminatory treatment of persons on the basis of nationality,³⁵⁶ mutual recognition of certificates of education,³⁵⁷ coordinated policies on working conditions and occupational safety,³⁵⁸ and special agreements to provide for the migration of workers, social security insurance, and pensions.³⁵⁹ The scope of the CIS Economic Union thus appears, at least on paper, to be similar in scope to that of the EC Treaty³⁶⁰ and the TEU, and in some instances is even wider.

The CIS Economic Union Treaty obliges the member states "to bring their national legislation into compliance with the norms of the present Treaty and international law."³⁶¹ Thus, the member states must:

³⁴⁷ CIS Economic Union Treaty, *supra* note 345, art. 27.

³⁴⁸ *Id.* art. 31. The CIS Economic Union Treaty expressly states that any contracting party "may declare it has no interest in a particular question, which should not be regarded as an obstacle to the adoption of the decision." *Id.* art. 27.

³⁴⁹ *Id.* art. 3.

³⁵⁰ *Id.* art. 3.

³⁵¹ *Id.* art. 7.

³⁵² For example, there shall be coordinated policies for transport and communications. *Id.*

³⁵³ *Id.* art. 8.

³⁵⁴ *Id.* art. 8.

³⁵⁵ *Id.* art. 19.

³⁵⁶ *Id.* art. 21.

³⁵⁷ *Id.* art. 22.

³⁵⁸ *Id.* art. 23.

³⁵⁹ *Id.* art. 24.

³⁶⁰ *Supra* note 22.

³⁶¹ *Id.* art. 26 (contracting parties recognize "the necessity of achieving uniform regulation of economic relations").

[W]ork out model acts regulating mutual economic relations; . . . carry out work on coordination and approximation of national legislation in force on the basis of the model drafts and norms of international law in order to eliminate the contradictions between them; . . . coordinate the adoption of the new legislative acts on economic issues; [and] . . . carry out preliminary examination of the drafts of normative acts, providing for the compliance of these acts with the norms of international law, the present Treaty, and bilateral and multilateral agreements.³⁶²

The principle of supremacy of the laws of the CIS Economic Union is clearly stated.³⁶³

This brief sketch of the main institutional and substantive aspects of the CIS Charter and the Economic Union Treaty suggests many parallels between economic integration in the CIS and in the EU. It would be premature to undertake further comparative analysis at this time, however, since the texts of the CIS Charter and the Economic Union Treaty alone do not provide an adequate basis for meaningful assessment.

c. *Economic (Customs) Union*

Belarus, Kazakhstan, Kyrgyzstan and Russia concluded an economic (customs) union agreement on 29 March 1996.³⁶⁴ Few details

³⁶² *Id.* art. 26.

³⁶³ Article 25 of the CIS Economic Union Treaty states:

[E]conomic relations between the Contracting Parties and their economic entities shall be regulated by the present Treaty, bilateral and multilateral agreements, and by the norms of international law and national legislation. *If the present Treaty contains norms and rules other than those provided by national legislation, the rules and norms of international law and the present Treaty shall be applied.*

Id. art. 25 (emphasis added).

³⁶⁴ See Treaty Deepening Integration in Economic and Humanitarian Spheres, reported in OMRI, *supra* note 13, Apr. 1, 1996 [hereinafter Quadripartite Treaty, per OMRI, *supra* note 13, Apr. 3, 1997]. Further economic accords were signed at an Apr. 12, 1996 meeting of CIS Prime Ministers. OMRI, *supra* note 13, Apr. 15, 1996. See also OMRI, *supra* note 13, Apr. 22, 1996 (meeting of the Integration Committee in Minsk).

Turkmenistan and Uzbekistan decided against participating in the enhanced union, citing *inter alia* their independence, preference for bilateralism, and antipathy to reviving the Soviet Union. Turkmenistan prefers "bilateral relations" and rejects "entry into rigid supranational structures" as "politically inexpedient and legally inapplicable." OMRI, *supra* note 13, Apr. 9, 1996. Uzbekistan, known for its "growing autonomy and its strongly independent stance in foreign policy," also elected not to join. See *Interview with Uzbekistan's Ambassador [to EU]: Links to West for Slow But Steady Transition*, EIS EURO-EAST REP., *supra* note 57, Dec. 10, 1996.

According to Kyrgyz President Akayev, such efforts do not signal the return of the USSR, but

about the content of this agreement are known,³⁶⁵ although it appears to implement relevant provisions of the CIS Economic Union Treaty discussed above. However, the low level of implementation of this agreement has led to dissatisfaction among the participants.³⁶⁶ Some recent pronouncements have been more optimistic. In January 1998, the prime ministers "signed documents on joint customs tariffs, coordination of their tax systems, forming a transport union, and unified transit tariffs."³⁶⁷ However, the presidents were unable to agree to Kazak President Nazarbaev's proposal "to 'create a common economic space' modeled on the EU".³⁶⁸ Nazarbaev views the customs union as the "nucleus" of a Eurasian union.³⁶⁹

d. Belarus-Russia Union

The Treaty on the Formation of a Community between Belarus and Russia was signed on 2 April 1996.³⁷⁰ A more detailed Union Charter was signed on 23 May 1997.³⁷¹ The Belarus-Russia Union calls for the

rather the "coming together of its former republics on a new basis." OMRI, *supra* note 13, Mar. 29, 1996. Tajikistan has expressed its "readiness to join the customs union and willingness to participate in a 'single economic space.'" *Id.*

³⁶⁵ The Quadripartite Treaty, *supra* note 364, covers diverse issues, including free movement of goods and common information systems. It also provides for a new set of institutions: an Inter-Governmental Council (composed of presidents, prime ministers and foreign ministers), an Integration Committee, and an Inter-Parliamentary Committee. OMRI, *supra* note 13, Apr. 1, 1996.

³⁶⁶ OMRI, *supra* note 13, Sept. 23, 1996 (Kazakhstan disappointed); OMRI, *supra* note 13, Nov. 26, 1996, and OMRI, *supra* note 13, Mar. 10, 1997 (largely unimplemented); OMRI, Jan. 30, 1997 (customs dispute between Russia and Kazakhstan). See also OMRI, *supra* note 13, Jan. 20, 1997 (referring to the "CIS tradition of paper creativity"). According to an official from Kazakhstan, "agreements between CIS states are often ineffective, and bilateral deals more useful. . . . [I]n some respects integration is proceeding slower with CIS members than with other countries. Kazakhstan has signed 20 agreements preventing double taxation with non-CIS countries and only one with another CIS country. Agreements on investment protection were signed with 12 foreign countries but not a single CIS country." OMRI, *supra* note 13, Oct. 25, 1996. Russian President Yeltsin expressed dissatisfaction with the work of the customs union in September, 1997. RFE/RL NEWSLINE, *supra* note 41 Sept. 11, 1997.

³⁶⁷ RFE/RL NEWSLINE, *supra* note 41, Jan. 23, 1998.

³⁶⁸ *Id.*

³⁶⁹ RFE/RL NEWSLINE, *supra* note 41, Jan. 19, 1998.

³⁷⁰ OMRI, *supra* note 13, Apr. 2, 1996 (Lukashenko hailed the agreement as the "highest form of community within the CIS"); OMRI, *supra* note 13, Apr. 3, 1996 (uncertainty over what to call the new entity). Tens of thousands of Belarusians marched in protest against this treaty. OMRI, *supra* note 13, Mar. 25, 1997. A Russian-Belarusian Parliamentary Assembly was also formed in April 1996. OMRI, *supra* note 13, Apr. 29, 1996. This body "will not have legislative authority but will instead prepare draft legislation for consideration by the Russian and Belarusian legislatures." *Id.*

³⁷¹ RFE/RL NEWSLINE, *supra* note 41, May 26, 1997. The provisions of this agreement appear to echo the largely unimplemented April 1996 agreement. See, e.g., OMRI, *supra* note 13, Dec. 31, 1996 ("Is Vodka Disrupting Russian-Belarusian Relations?"); OMRI, *supra* note 13, Jan. 14, 1997 (Yeltsin suggested measures to accelerate the April 1996 agreement which "has languished largely unimplemented"); OMRI, *supra* note 13, Mar. 10, 1997; RFE/RL NEWSLINE, *supra* note 41, Apr. 1, 1997. See also ROSSIISKAYA GAZETA, Apr. 3, 1997, EEUROPE-NEWS-DIG., *supra* note 346, Apr. 4, 1997 (English translation of the Treaty on a Union between Belarus and Russia provides in Article 1 that the "Community of Russia and Belarus shall be transformed into a Union with the terms of reference

formation of an integrated political and economic union based on the sovereignty and equality of the member-states.³⁷² It calls *inter alia* for common citizenship and for coordination of economic and security issues.³⁷³ In any event, integration will be gradual,³⁷⁴ and implementation has been limited. The Belarus-Russia Union is open for other CIS countries to join.³⁷⁵

stemming from its Charter."). Since the precise relationship between these agreements is not clear, they will be referred to collectively as the "B-R Union Treaty".

Belarussian President Lukashenko signed a decree ordering his government to implement the B-R Union Treaty. RFE/RL NEWSLINE, *supra* note 41, June 5, 1997. In Russia, it was ratified by both the Duma, RFE/RL NEWSLINE, *supra* note 41, June 6, 1997, and the Federation Council, RFE/RL NEWSLINE, *supra* note 41, June 10, 1997. The B-R Union Treaty entered into effect on June 11, 1997. RFE/RL NEWSLINE, *supra* note 41, June 12, 1997. See generally Floriana Fossato, *Belarus/Russia: Goal of Union Charter on Eve of Signing*, ARMENIAN NEWS NETWORK, *supra* note 188, May 21, 1997.

³⁷² OMRI, *supra* note 13, Apr. 3, 1997. See also RFE/RL NEWSLINE, *supra* note 41, Apr. 7, 1997 (quoting Belarusian President Lukashenko as saying that unification will "take place in line with the EU model, where each of the members retains its sovereignty"). The agreement was reportedly watered down at the last minute, when Belarus objected to a "Russian-proposed clause under which the ultimate aim of the union . . . would have been to form a single federation." RFE/RL NEWSLINE, *supra* note 41, May 23, 1997.

The main institution of the Belarus-Russia Union is the Supreme Council, composed of the presidents, prime ministers and speakers of parliament; its decisions must be taken on a unanimous basis "signed by both presidents." *Id.*

³⁷³ RFE/RL NEWSLINE, *supra* note 41, Apr. 3, 1997. According to Belarusian President Lukashenko, "the charter only specifies but does not develop the idea of" union. RFE/RL NEWSLINE, *supra* note 41, Apr. 9, 1997. Russian Foreign Minister Primakov "added that the extent of the union will be determined by the peoples of the two states in the future rather than now." *Id.* See further OMRI, *supra* note 13, Jan. 28, 1997 (Belarus pushing for talks on currency union); OMRI, *supra* note 13, Mar. 29, 1997 ("the main thrust of the treaty lies in the voluntary harmonization of economic and social legislation" and "there is no specific pledge to introduce a common currency"); OMRI, *supra* note 13, Apr. 5, 1996 (Russian Central Bank Chairman said that Russia will not shore up the Belarusian currency); RFE/RL NEWSLINE, *supra* note 41, June 5, 1997 (the union may lead to a joint defense policy and a common currency). Russia's major preoccupation seems to be security. See RFE/RL NEWSLINE, *supra* note 41, Apr. 2, 1997 (Russian President Yeltsin stressed that the union "will not hurry to form a common budget or establish a single currency" but rather that "coordinating security policies and border controls will be the top priority"); Statement of Russian Prime Minister Chernomyrdin, *quoted in* RIA NOVOSTI, May 22, 1997 (stressing "the need for Russia to be present around the entire perimeter of CIS external borders"). The first joint budget was approved in December 1997. RFE/RL NEWSLINE, *supra* note 41, Dec. 17, 1997.

³⁷⁴ See RFE/RL NEWSLINE, *supra* note 41, Apr. 7, 1997 (Russian Duma passed a statement demanding gradual unification; President Yeltsin stressed that the union agreement is "only the beginning" of the integration process).

³⁷⁵ A poll taken in May 1997 revealed that "75% of Russians view the Russia-Belarus union as the first step towards the restoration of the USSR." RFE/RL NEWSLINE, *supra* note 41, June 27, 1997. See Liz Fuller & Harry Tamrazian, *Will Armenia Be First to Join Russia-Belarus Union?*, RFE/RL NEWSLINE, *supra* note 41, May 29, 1997; RFE/RL NEWSLINE, *supra* note 41, Apr. 3, 1997 (quoting CIS presidents' reactions to the Belarus-Russia Union; only Tajik President Rakhmonov was "unambiguously in favor" and expressed the "hope that other CIS states would accede"). Ukraine has asserted that the B-R Union "will destroy the CIS." RFE/RL NEWSLINE, *supra* note 41, Apr. 16, 1997. See also Paul Goble, *Integration as the Final State of Disintegration*, RFE/RL NEWSLINE, *supra* note 41, May 26, 1997 (B-R Union "makes the formation of a single federal state including them or other former Soviet republics significantly less, rather than more, likely").

e. Conclusions

The evolution of the CIS is ongoing, particularly with regard to economic measures. The CIS foresees, at least on paper, a more comprehensive form of union than that yet achieved by the EU. However, the problems encountered in getting the CIS economic (customs) union off the ground suggest that it will be many years before the CIS catches up, if ever, to the EU's level of real integration.³⁷⁶

In the CIS context it is exceedingly difficult to keep track of the many texts that have been concluded, and even moreso to ascertain whether and to what extent they may actually have been implemented.³⁷⁷ According to the Chairman of the Integration Committee of the economic (customs) union, he has "analysed nearly 600 joint documents in this sphere, . . . [and] hardly any of the 200 such agreements provide for any obligations."³⁷⁸ Notwithstanding the doubts about the viability of the CIS,³⁷⁹ the March 1997 CIS Summit yielded surprisingly optimistic (if not outright tangible) results, including forthright discussion and a sense of common purpose in "looking

³⁷⁶ See Pavel Shinkarenko, *Five Years After the Fall: CIS is Alive, if not Kicking*, EEUROPE-NEWS-DIG., *supra* note 345, Dec. 10, 1996 (according to the CIS Executive Secretary, "[t]he attempt to create an Economic Union modelled after the European Common Market has failed. Many leaders believe [sic] that the supra-national coordinating agencies, which should be created in this case, will greatly endanger the sovereignty of the new states. Wise men say that time alone can heal us of the childhood 'independence disease'").

³⁷⁷ The level of implementation has been very low. See, e.g., Buxbaum, *supra* note 49, at 134, n. 23 (noting that hundreds of legal instruments have been promulgated among CIS members; the Russian Press Digest of Jan. 21, 1993 estimated more than 200 agreements in the economic sphere alone and reported a low level of implementation); OMRI, *supra* note 13, May 3, 1996 (Deputy Chairman of the Interstate Economic Committee "conceded that monitoring the implementation of the 600 plus agreements signed by CIS members is a difficult challenge"). The Russian Duma has proposed that it should monitor the implementation of the various agreements concluded by Russia and other CIS Member States. RFE/RL NEWSLINE, *supra* note 41, June 27, 1997.

A corresponding problem is the difficulty of assessing how various developments or proposals relate to one another, or where they fit within the broader framework. Some measures apparently pertain to implementation of the CIS Economic Union Treaty, while others pertain to matters that fall outside of the scope of the CIS Economic Union Treaty. For example, Russia held talks with Kazakhstan and Kyrgyzstan on the formation of an energy union in April 1996. OMRI, *supra* note 13, Apr. 9, 1996.

³⁷⁸ Shinkarenko, *supra* note 376 ("That is why the Economic Union is a stillborn baby . . . It is much more difficult to implement one agreement than to sign ten new ones."). But see *id.* (CIS Executive Secretary estimates that "365 of 800 such agreements have a direct effect and 'are working to full capacity'"). See also OMRI, *supra* note 13, Mar. 28, 1997 ("[D]espite the signing of 700 inter-governmental agreements and the creation of 80 supranational CIS organs, coordination of economic policies remains weak to non-existent, while political rifts continue to grow.").

³⁷⁹ Even Russian President Yeltsin has admitted "that the CIS has many faults," but has nonetheless "called for faster and more effective CIS integration." OMRI, *supra* note 13, Dec. 6, 1996. See also OMRI, *supra* note 13, Mar. 28, 1997 ("Like OMRI, the CIS seems to have outlived its usefulness as a temporary organization bridging the transition from socialism to capitalism.").

for ways of consolidating the CIS.³⁸⁰ However, subsequent events cast it even further into doubt. While Belarus and Russia have continued to push for further integration within the CIS,³⁸¹ other members have expressed doubts about the CIS' viability.³⁸² Despite these doubts, the CIS did manage to implement the concept for Integrated Development of the CIS,³⁸³ and to reach agreement on creating a common agricultural market.³⁸⁴

An important point of contrast between the CIS and the EU is the view towards "variable geometry".³⁸⁵ As noted in Part IV.C.3.a above with regard to the CIS Charter, integration within the CIS contemplates a multi-speed process.³⁸⁶ On the other hand, the EU insists, at least for aspiring

³⁸⁰ See Sergey Ivanov, 'I Do Not Recall Anything Like This Happening Before.' *This is What Boris Yeltsin Said After the CIS Summit*, KOMMERSANT-DAILY, Mar. 29, 1997, at 3, EEUROPE-NEWS-DIG., *supra* note 346 (quoting Russian President Yeltsin). Even the usually skeptical Ukrainian President Kuchma, *see, e.g.*, OMRI, *supra* note 13, Mar. 28, 1997, called the Mar. 1997 meeting "a watershed." Ivanov, *supra*. See also President Yeltsin's Speech at the CIS Summit Session (Moscow, Mar. 29, 1998), reprinted in EEUROPE-NEWS-DIG., *supra* note 346, Mar. 31, 1997. Compare Paul Goble, *Analysis from Washington -- Yeltsin's CIS Ultimatum*, EEUROPE-NEWS-DIG., *supra* note 346, Apr. 10, 1997 (noting that Yeltsin "made it clear that he equated 'anti-integration' sentiments in the CIS as the equivalent of 'anti-Russian forces'" and referring to his "shift to the new hardline"). Russia has expressed concern that "Western companies have supplanted Russian ones as trading partners in CIS countries." RFE/RL NEWSLINE, *supra* note 41, Apr. 16, 1997.

³⁸¹ See, *e.g.*, RFE/RL NEWSLINE, *supra* note 41, Oct. 2, 1997 (Belarus President Lukashenko "advocated more systematic implementation of decisions adopted by the CIS and the creation of new forms of economic integration"); RFE/RL NEWSLINE, *supra* note 41, Dec. 19, 1997 (Russian President Yeltsin "sent an unequivocal message to the presidents of the other CIS member states outlining proposals for further integration").

³⁸² See, *e.g.*, RFE/RL NEWSLINE, *supra* note 41, Aug. 21, 1997 (Kazakhstan President Nazarbayev); RFE/RL NEWSLINE, *supra* note 41, Oct. 15, 1997 (Ukrainian President "casts doubt on [the] CIS' future" and suggests that it "has exhausted itself as an institution" at least "in its current form"); RFE/RL NEWSLINE, *supra* note 41, Oct. 23, 1997 (most participants at Chisinau CIS Summit "not optimistic").

³⁸³ Discussed *supra* in note 346. See RFE/RL NEWSLINE, *supra* note 41, Oct. 10, 1997 (noting, however, that Georgia did not approve the concept).

³⁸⁴ RFE/RL NEWSLINE, *supra* note 41, Oct. 24, 1997.

³⁸⁵ See John Usher, *Variable Geometry or Concentric Circles: Patterns for the European Union*, INT'L & COMP. L. QUARTERLY, Vol. 46, Part II, Apr. 1997.

³⁸⁶ See, *e.g.*, Statement by Deputy Chairman of CIS Interstate Economic Committee, OMRI, *supra* note 13, May 3, 1996 (noting that by "an accident of history" there are three alliances within the CIS -- the Central Asian Customs Union, the CIS economic (customs) union, and the Belarus-Russia Union -- which bodies "form a 'pyramid' of increasing integration"). The Central Asian Customs Union is discussed in Part IV.C.4. See also Ivanov, *supra* note 380 (intra-CIS alliances "do not contradict the idea of the CIS"); Shinkarenko, *supra* note 376 (discussing the "diesel engine method" by which "one country, or a group of countries, pull other members along" as an alternative to the "method of creating a strong union geared to the possibilities of the weakest member").

There are many other examples of formal and informal bilateral agreements seeking to achieve further integration between various CIS member states. For example: Georgia signed nine bilateral agreements on economic cooperation with Ukraine, OMRI, *supra* note 13, Feb. 17, 1997 (presidents of both countries "voiced skepticism over the viability of the CIS"); Ukraine has proposed signing a free trade agreement with Kazakhstan, OMRI, *supra* note 13, July 10, 1996, signed a customs union agreement with Moldova, OMRI, *supra* note 13, Mar. 12, 1997, and formed a "Commission for Comprehensive Cooperation" with Uzbekistan, RFE/RL NEWSLINE, *supra* note 41, Apr. 18, 1997; Azerbaijan and Uzbekistan signed 19 bilateral agreements (of indeterminate nature) in June 1997, RFE/RL NEWSLINE, *supra* note 41, June 20, 1997; Belarus and Ukraine signed a variety of trade-related

members, on an "all or nothing" accession.

4. Central Asian Customs Union

All five Central Asian republics -- Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan -- are members of the CIS and have signed the CIS Economic Union Treaty,³⁸⁷ and two of them (Kazakhstan and Kyrgyzstan) have also joined the economic (customs) union with Belarus and Russia.³⁸⁸ This is generally viewed as a pragmatic move to help rebuild economic links with former trading partners, rather than an attempt to return to the bosom of Mother Russia.³⁸⁹ Indeed, developments in Central Asia suggest that the countries in this region are looking beyond the CIS for development opportunities.

Leaders of all five Central Asian republics have met regularly since achieving independence, and have demonstrated a commitment to sub-regional integration. Kazakhstan, Kyrgyzstan and Uzbekistan formalized this commitment by concluding a customs union agreement in 1994.³⁹⁰ While this agreement (like those concluded within the CIS framework) remains largely unimplemented, the countries involved have clearly demonstrated their intention to push ahead with Central Asian political and economic subregional integration efforts, alongside their increasing (re)integration within the CIS.³⁹¹ Thus, Central Asian institutions have been

agreements (including customs cooperation) on January 17, 1997, OMRI, *supra* note 13, Jan. 20, 1997 (Belarusian President Lukashenko noted that "if the countries carry out the signed agreements, Belarus's relations with Ukraine will overtake its relations with other states."). *See also* OMRI, *supra* note 13, Dec. 13, 1996 (State Council of Tatarstan signed protocol on interparliamentary cooperation with Legislative Assembly of Ulyanovsk Oblast, and has also signed similar agreements with "the legislatures of neighboring republics and regions as well as with the parliaments of some CIS states . . .").

³⁸⁷ *Supra* note 345.

³⁸⁸ Discussed *supra* in text accompanying notes 364-69. Kazakhstan and Kyrgyzstan signed a Treaty on Eternal Friendship in April 1997. RFE/RL NEWSLINE, *supra* note 41, Apr. 10, 1997 (Kazakh President Nazarbaev rejected the suggestion that this was intended as an alternative to the Belarus-Russia Union and said "if the CIS states unite in Europe, then the countries of Central Asia could join them and we would have a Eurasian Union").

³⁸⁹ *See, e.g.,* Anthony Hyman, *Moving Out of Moscow's Orbit: the Outlook for Central Asia*, 69 INT'L AFF. 289 (1993).

³⁹⁰ *See* Liz Fuller, *New Geo-Political Alliances on Russia's Southern Rim*, RFE/RL NEWSLINE, *supra* note 41, Apr. 16, 1997 (noting that this union "was intended as a model for closer economic integration within the CIS"); RFE/RL NEWSLINE, *supra* note 41, Apr. 10, 1997 (Kazakh President Nazarbaev "first floated the idea of a Eurasian Union strengthening integration within the CIS in 1994"). Turkmenistan declined an invitation to join the Central Asian Customs Union. RFE/RL NEWSLINE, *supra* note 41, Jan. 7, 1998. Tajikistan's application to join was first rejected, *id.*, but subsequently accepted. RFE/RL NEWSLINE, *supra* note 41, Mar. 27, 1998.

³⁹¹ Meeting in Tashkent in April 1996, representatives of these three countries declared that conclusion of the CIS economic (customs) union with Belarus and Russia, discussed *supra* in notes 364-69, would not damage their subregional cooperation. OMRI, *supra* note 13, Apr. 9, 1996. In fact, resurgent interest in Central Asian integration can be partly explained by dissatisfaction regarding the low level of implementation of agreements concluded within the CIS framework.

created, which some view as "far more effective than [the] CIS equivalents."³⁹² Further, these countries have taken steps to speed along and even broaden integration pursuant to the Central Asian Customs Union.³⁹³

The similarities and differences between CEFTA and the Central Asian Customs Union are noteworthy. Both subregional movements operate within the context of a larger regional framework (i.e. the EU and the CIS). While their goals are not identical, they share in common their marginal position and their strategic attempts to exploit that position. Both subregional initiatives serve as models for further integration within that larger framework, although this result was accidental in Central Europe and intentional in Central Asia. Both CEFTA and Central Asian countries are actively crossing over to establish linkages with countries in the "other" region,³⁹⁴ which suggests a tendency for countries located in the marginal areas of Europe not to place all their bets on just one (regional) horse. This is probably a smart move for both groups of countries, albeit for different reasons.

CEFTA countries are pushing for further integration with the EU, whereas the Central Asian Customs Union countries are already full members of the CIS. Thus, CEFTA countries tend to view subregional integration as a means to the end of union at regional level (i.e. accession to the dynamic EU), whereas Central Asian countries view subregional integration as an end in itself (i.e. alternative to the static CIS). In this

Since few details are available concerning the institutions and scope of obligations that these three countries have undertaken towards one another, it is impossible to assess their consistency with the obligations they have undertaken under the CIS agreements. See Fuller, *supra* note 390 (Russian President Yeltsin expressed the view at March 1997 CIS Summit that integration within the CIS "should take priority over alternative alignments" and noted that CIS member states are "free to seek friends to the West, to the South, and to the East. But what kind of friendship is it that harms your neighbors?").

³⁹² Fuller, *supra* note 390 (referring to the Executive Committee of Heads of State and Government and the Council of Foreign Ministers). A Central Asian Bank for Cooperation and Development has also been created. *Id.* Further, Kazakhstan has proposed the formation of a unified parliament of the three countries. In March 1998, the four members "agreed to form an international hydroelectric consortium and reached an accord on common principles for creating a securities market." RFE/RL NEWSLINE, *supra* note 41, Mar. 27, 1998.

³⁹³ Representatives of Kazakhstan, Kyrgyzstan and Uzbekistan signed various cooperative accords at their meeting in Tashkent in April 1996. OMRI, *supra* note 13, Apr. 9, 1996. Further, they "sought to broaden cooperation" in the customs union at their meeting in Bishkek in March 1997. OMRI, *supra* note 13, Mar. 17, 1997. In particular, at Bishkek they concluded thirteen agreements, including one creating a "common economic area during 1997-1998" and others covering "industrial cooperation, a legal base for the free movement of labor . . . , [and] coordination on migration." *Id.* But see OMRI, *supra* note 13, Mar. 19, 1997 (speculating that Kazakhstan might be planning to withdraw from the customs union because "the economic security of the state is suffering" because a "huge amount of contraband goods is being brought in"). At an earlier meeting in Bishkek, these three countries signed a treaty declaring eternal friendship and agreed to establish a Central Asian peacekeeping battalion. OMRI, *supra* note 13, Jan. 13, 1997.

³⁹⁴ For example, all Central Asian countries have concluded or are in the process of negotiation PCAs with the EU. See discussion *supra* in text accompanying notes 100-13. The CEFTA countries, on the other hand, have been somewhat slower to seek ties in the former USSR (for historical and economic reasons), but the process has begun. See *infra* note 448.

regard, CEFTA countries could take a lesson from Central Asian countries, which explicitly honor the dynamic potential of subregional integration.

D. INFORMAL SUBREGIONAL INTEGRATION INITIATIVES

There has been a virtual explosion of participation in informal subregional integration initiatives having a more or less geographical identity. It is common for a given country to belong to more than one of these cooperative projects, as it is for each project to claim a diverse membership drawn from the EU, the CIS, Central and Eastern Europe, and (occasionally) elsewhere. Thus, the informal initiatives overlap in terms of their membership, and transcend usual boundaries. These informal organizations have become audible voices within the cacophonous European house, despite the fact that they tend to be even weaker than CEFTA, both substantively and institutionally.

It is important (but not always easy) to draw a distinction between those projects that are the result of EU initiative, and those which are more or less independent of the EU. This article addresses those projects that are more or less independent of EU leadership, rather than detailing every EU initiative in Central and Eastern Europe. It bears mentioning, however, that the EU has encouraged and even committed funds for the support of a various subregional organizations.³⁹⁵

1. Council of Baltic Sea States

The Council of Baltic Sea States (CBSS)³⁹⁶ provides a good example of the loose type of structure that is proliferating in Europe, and a good contrast to the more focused CEFTA model. Its membership includes the three Baltic States (Estonia, Latvia and Lithuania), some EU countries (Denmark, Germany, Sweden), some non-EU countries (Iceland, Norway, Poland, Russia), and the Commission of the European Community.³⁹⁷ CBSS' overriding goal is the development of "good-neighborly relations" among its members, which includes "political contacts, and development of trade and cooperation in all spheres of life."³⁹⁸ The CBSS' Fifth Ministerial Summit was intended to increase and intensify cooperation in the areas of

³⁹⁵ See, e.g., Communication on EC Support, *supra* note 281.

³⁹⁶ The Council of Baltic Sea States was founded in 1992. See generally, Baltinfo Website, *supra* note 327.

³⁹⁷ Baltinfo Website, *supra* note 327.

³⁹⁸ CBSS Gdańsk Communiqué, *supra* note 327, at point 3. At its Fourth Ministerial Summit in Gdańsk in May 1995, CBSS members *inter alia* commemorated the 50th anniversary of the end of World War II; approved reports prepared by Working Groups on Economic Co-operation, on Nuclear and Radiation Safety, and on Assistance to Democratic Institutions; and decided to convene a conference on economic cooperation in 1996 in Helsinki. *Id.*

democracy, international cooperation, trade, economy, environmental control, and cultural matters in the Baltic Sea region.³⁹⁹ The CBSS' Sixth Ministerial Summit, held in Riga in July 1997, emphasized the importance of Russian involvement in regional developments and furthering economic cooperation.⁴⁰⁰

The CBSS operates by way of a simple intergovernmental institutional structure that includes the Council itself, a variety of Working Groups, and since October 1994, a Commissioner on Democratic Institutions and Human Rights, Including the Rights of Persons Belonging to Minorities, with a permanent secretariat in Copenhagen.⁴⁰¹ A permanent secretariat has been proposed.⁴⁰² The chairmanship of the CBSS rotates on an annual basis; Sweden held the chair in 1995-1996, Lithuania in 1996-1997, and Denmark in 1997-1998.

Two aspects of the CBSS bear special mention. First, it was until very recently the only forum (outside the OCSE) where the Baltic States willingly maintained ongoing relations with Russia.⁴⁰³ Second, the CBSS bears a close relation to the EU, not least because of overlapping membership. The EU undertook to study the ways in which its institutions might participate in the activities of the CBSS.⁴⁰⁴ Ultimately the EU decided to cooperate with the CBSS, and thus the president of the Commission and the Prime Minister of Italy (which then held the presidency of the European Council) attended the Visby Summit.⁴⁰⁵

The EU has regularly been represented at CBSS Summits since then.⁴⁰⁶ Now that the prospect of earlier accession to the EU by Estonia has

³⁹⁹ Visby Summit (May 3-4, 1996) [hereinafter Visby Summit Declaration], Baltinfo Website, *supra* note 327. A ministerial meeting was held in July 1996 in Kalmar. *Chairman-in-Office of the Council of Baltic Sea States (CBSS) Visits the European Commission*, IP: 96-1146, Dec. 10, 1996. In Kalmar, an Action Plan was agreed to increase further regional cooperation CBSS Website, *supra* note 327.

⁴⁰⁰ RFE/RL NEWSLINE, *supra* note 41, July 3, 1997.

⁴⁰¹ CBSS Gdańsk Communiqué, *supra* note 327, points 10-14 (summarizing recent activities of CBSS institutions, including Working Groups on assistance to democratic institutions, economic cooperation, and nuclear and radiation safety). There is also a parliamentary dimension to cooperation. *Id.* at point 20.

⁴⁰² Baltinfo Website, *supra* note 327.

⁴⁰³ In May 1997, Lithuanian legislators set up a group to establish parliamentary ties with Russia. RFE/RL NEWSLINE, *supra* note 41, May 7, 1997.

⁴⁰⁴ Council Conclusions on Baltic Sea Region, *supra* note 145 (the Council in 1995 called upon the Commission to submit proposals regarding the role which the Commission may come to play, within its sphere of competence, in the CBSS).

⁴⁰⁵ See Commission Communication on a Regional Cooperation Initiative in the Baltic Sea Region, reported in BULL. EUR. UNION, May 1996, point 1.4.49. The EU Commission presented a regional cooperation initiative at the May 1996 Visby Summit, then reported back to the European Council at the Florence Summit in June 1996. AGENCE EUR., Feb. 28, 1996, at 7. See generally *Baltic Sea States Summit, 3-4 May 1996 - some questions and answers*, Swedish Ministry of Foreign Affairs, Baltinfo Website, *supra* note 327.

⁴⁰⁶ See, e.g., RFE/RL NEWSLINE, Jan 23, 1998 (Commission President Santer attended Riga Summit).

driven a wedge between the Baltic States, the CBSS is likely to become more prominent as a cooperative forum. At its January 1998 meeting, the prime ministers of the member countries "confirmed their desire to promote regional cooperation in order to establish a Europe 'without dividing lines'."⁴⁰⁷

2. Black Sea Economic Cooperation

The Black Sea Economic Cooperation (BSEC) was formally established on 25 June 1992, by the heads of state of Albania, Armenia, Azerbaijan, Bulgaria, Georgia, Greece, Moldova, Romania, Russia, Turkey and Ukraine.⁴⁰⁸ BSEC is a subregional structure for multilateral cooperation; it covers a broad range of economic and other activity,⁴⁰⁹ and has set up an elaborate set of institutions.⁴¹⁰ In the Bosphorus Statement,

⁴⁰⁷ RFE/RL NEWSLINE, Jan. 26, 1998.

⁴⁰⁸ See *Summit Declaration on Black Sea Economic Cooperation* [hereinafter BSEC Summit Declaration], BSEC Website <<http://www.access.ch/tuerkei/grupf/keid.htm>> [hereinafter BSEC Website]. In fact, Turkey first proposed the creation of BSEC in 1990, and called preliminary meetings in Ankara in December of that year. Daniel Connelly, *Black Sea Economic Cooperation*, RFE/RL RESEARCH REPORT, July 1, 1994, at 31. From Turkey's perspective, BSEC offers a possible alternative, or even a short-cut to EU membership. *Id.* at 32. See *Bosphorus Statement of 25 June 1992*, BSEC Website, *supra* [hereinafter Bosphorus Statement] ("Heads of State and Government . . . stressed that in the building of the new architecture of Europe, their countries and peoples had an important and creative contribution to make and that the Black Sea Economic Cooperation constituted an effort that would facilitate the process and structures of European integration."); OMRI, *supra* note 13, Feb. 11, 1997 (Turkish Foreign Minister Viller expressed hope that in future BSEC will be "integrated into Europe"). See generally, ÖMER FARUK GENÇKAYA, *THE BLACK SEA ECONOMIC COOPERATION PROJECT: A REGIONAL CHALLENGE TO EUROPEAN INTEGRATION* 549 (UNESCO 1993).

Austria, Egypt, Israel, Italy, Poland, Slovakia and Tunisia have observer status with BSEC. Vladimir Isachenkov, *Black Sea Nations Agree to New Economic Links*, J. OF COM., Oct. 28, 1996, at 2A.

⁴⁰⁹ Cooperation shall include projects of common interest in the fields *inter alia* of transport and communications, informatics, environment, science and technology, energy, mining and metallurgy, tourism, agriculture and agro-industry, health care and pharmaceuticals veterinary and sanitary protection. BSEC Summit Declaration, *supra* note 408, point 13. At their October 1996 Moscow Summit, BSEC leaders expanded this list to include "fighting organized crime, terrorism, illegal migration and illegal trafficking in drugs, arms and radioactive materials." Isachenkov, *supra* note 408. In one recent example, the Georgian Government and the EC Commission sponsored a conference to discuss the TRASECA project (i.e. the possibility of revising the historic "Silk Road" from Europe via Turkey, Transcaucasia and Central Asia, to China), and invited deputy premiers and transport ministers of BSEC countries to attend. RFE/RL NEWSLINE, *supra* note 41, Apr. 11, 1997. BSEC also covers cultural, educational and financial cooperation. Connelly, *supra* note 408, at 32. For example, a Black Sea University has been proposed for Bucharest. *Id.* at 35. In addition, some leaders (particularly Ukrainian and Georgian) urged early on that BSEC address security issues. *Id.*

⁴¹⁰ The decision-making body of the BSEC is the Meeting of the Ministers of Foreign Affairs of the Participating States (MMFA), which has established subsidiary bodies (e.g. Working Groups of Experts). *The BSEC Structure*, BSEC Website, *supra* note 408. Working groups are active in many of the substantive areas listed, *supra* note 409, as well as in the areas of organizational matters, statistics, and visas. Connelly, *supra* note 408, at 33. An interparliamentary organization called the Parliamentary Assembly of the BSEC (PABSEC) was established in February 1993. In addition, since 1994 there has been a permanent International Secretariat in Istanbul. *The BSEC Structure*, *supra*. The participating states have also proposed the creation of a Black Sea Foreign Trade and Investment Bank

these countries expressed their shared view that "freedom must also extend to the field of the rights and rules governed by the free market economy," and agreed that they must establish "solid and effective mechanisms in order to achieve a higher degree of economic cooperation"⁴¹¹ and thereby to contribute "to the establishment of a Europe-wide economic area, as well as to the achievement of a higher degree of integration of the Participating States into the world economy."⁴¹² At their October 1996 meeting in Moscow, leaders signed a declaration "pledging to build stronger economic ties" and calling "for the group to become a full-fledged regional economic organization."⁴¹³ They met in Istanbul on 7 February 1997 to discuss the creation of a free trade area.⁴¹⁴ Actual progress has been slow, but calls for increased cooperation continue. At a session of BSEC Parliamentary Assembly in Chisinau in December 1997, Moldovan President Lucinschi "called on member countries to coordinate economic and commercial legislation and to transform the organization into one with 'a well defined judicial status'."⁴¹⁵

Tension among various BSEC Participating States "not only impairs its decision-making capacity but also jeopardizes its survival."⁴¹⁶ In this light, BSEC's tenacity is particularly salutary, for the troubled region has need of a forum for both political and economic cooperation. In April 1997, Black Sea leaders renewed the call for "cooperation and unity as a way to combat regional conflicts."⁴¹⁷ The continued existence of BSEC in the face of these obstacles further affirms the attractiveness of subregional initiatives as a means of paving the way to integration into the global economy and improved bargaining position with the West, and in particular the EU.⁴¹⁸ It

(in Thessaloniki) and established a private-sector BSEC Council (for "regulating and promoting group and individual initiatives by private firms and creating advantageous conditions for investment"). Connelly, *supra*, at 35. The Bank will have \$300 million in contributions from member states at its disposal. OMRI, *supra* note 13, Feb. 11, 1997. The BSEC Council occasionally meets in conjunction with the MMFA, which brings large numbers of government officials and business leaders together. See, e.g., RFE/RL NEWSLINE, *supra* note 41, Apr. 28, 1997.

⁴¹¹ Bosphorus Statement, *supra* note 408.

⁴¹² BSEC Summit Declaration, *supra* note 408, at point 5.

⁴¹³ Isachenkov, *supra* note 408.

⁴¹⁴ OMRI, *supra* note 13, Feb. 11, 1997. "BSEC officials . . . hope to have a free trade zone in the region by 2010." Jon Hemming, *Black Sea Heads Seek Cooperation to End Conflict*, *EEUROPE-NEWS-DIG.*, *supra* note 346, Apr. 29, 1997. The free trade agreement between Romania and Turkey is "a decisive step forward in this direction." *Id.*

⁴¹⁵ RFE/RL NEWSLINE, *supra* note 41, Dec. 11, 1997.

⁴¹⁶ Connelly, *supra* note 408, at 33. For example, the conflict between Armenia and Azerbaijan over Nagorno-Karabakh; separatist struggles such as those between Georgia and Abkhazia, Moldova and the Transdniester, and Turkey and its Kurdish population; historical antagonisms such as those between Turkey and Greece and Turkey and Armenia; and competition for regional dominance between Turkey, Iran and Russia. *Id.*

⁴¹⁷ Hemming, *supra* note 414.

⁴¹⁸ The EU convened a conference on "New Energy Realities in the Black Sea Region" in May 1994, which was attended by the EU, BSEC, and the 5 Central Asian republics. This conference "was intended to initiate energy cooperation . . . and promote trade and investment." Connelly, *supra* note

appears likely that the importance of BSEC will increase, in as much as it provides a form for a large number of CEECs which will be increasingly excluded from the EU's enlargement discourse.

3. Central European Initiative

The Central European Initiative (CEI) started out⁴¹⁹ as a loose coalition that from time to time has brought together representatives of Albania, Austria, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, the Czech Republic, Italy, Hungary, Macedonia, Moldova, Poland, Romania, Slovakia, Slovenia, and Ukraine.⁴²⁰ The CEI is thus akin to an interregional "structured dialogue"⁴²¹ that has a fluid agenda and floating participation, consonant with its design as a "flexible and pragmatic tool" for overcoming divisions in Europe.⁴²²

408, at 36. That author further notes that "[w]hereas the BSEC has perhaps a complementary relationship with the EU, its relationship with the CIS region clearly has the potential to be competitive." *Id.* at 37. Some see BSEC as an alternative to "a limping CIS" and argue that "the more problems we solve within the BSEC, the fewer we'll have to deal with within the CIS." *Id.* at 38.

⁴¹⁹ In fact, the CEI evolved from previous cooperative forms, starting with the Quadrangolare that was instigated by Italy and founded on Nov. 11, 1989. The founding members were: Austria (an EFTA country), Italy (an EC country and member of NATO), Hungary (a CMEA and Warsaw Pact country), and Yugoslavia (a non-aligned federation of communist republics). Maurizio Cremasco, *From the Quadrangolare to the Central European Initiative - an Attempt at Regional Cooperation*, in *THE INTERNATIONAL SYSTEM AFTER THE COLLAPSE OF THE EAST-WEST ORDER* 448, 448 (Armand Clesse, et al. eds.). Italy intended the Quadrangolare "as a means of strengthening the economic, social and cultural cohesion of the region, and as a contribution to stability and the future integration of the [CEECs] into the European Community," and further hoped "to prevent the marginalization of the states of the Danubian-Adriatic region in a moment of rapid transformation of the European political and social landscape." *Id.* at 449. The Quadrangolare became the Pentagonale when Czechoslovakia joined in 1990, and the Hexagonale when Poland joined in 1991. The name was changed to "Central European Initiative" in Jan. 1992, after the disintegration of Yugoslavia. *Id.* at 450. See generally Central European Initiative Secretariat Website, <<http://www.eurocube.it/cciaats/english/structure/inizcenteur.html>> [hereinafter CEI Website]; CEInet: Information Network on Internet for the Central European Initiative <<http://www.digit.it/ceinet/home1.htm>>.

⁴²⁰ CEI Website, *supra* note 419. In 1995, Albania, Belarus, Bulgaria, Romania, and Ukraine became members. Moldova became the sixteenth member in Nov. 1996. OMRI, *supra* note 13, Nov. 11, 1996. The Federal Republic of Yugoslavia has applied to join the CEI, but has not yet been admitted to membership. *Id.*

⁴²¹ According to Cremasco, *supra* note 419, at 452, CEI's "institutional and bureaucratic infrastructure" were "kept to a minimum - not even a secretariat was created." There is a rotating Presidency, a National Coordinators' Group, and a number of Working Groups. *Id.* CEI Working Groups exist in many fields, including transport, environment, medium-sized enterprises, telecommunications, culture, tourism, statistics, disaster relief and protection, scientific and technological research, information, energy, and migration, *id.* at 453, but their rate of project completion has been low, *id.* at 454. See also *Statement of Polish Prime Minister Olesky During the Meeting of the Association Council of the CEI at the Level of Heads of Government* (Warsaw, Oct. 7, 1995), Polish Gov't Website, *supra* note 176 [hereinafter Olesky CEI Speech, Oct. 1995] (CEI is "the least formalised and non-bureaucratic platform of contacts"). Despite these intentions, a permanent CEI secretariat now sits in Trieste. CEI Website, *supra* note 419.

⁴²² Cremasco, *supra* note 419, at 449 (observing that the CEI "criteria of pragmatism and flexibility" mean that "cooperation could be open to . . . partners on specific subjects"). This probably accounts for the fact of the floating participation, i.e. the fact that not all CEI member countries attend

CEI appears to serve as a forum for discussion any topics of interest to the members.⁴²³ However, its activities have moved beyond the "good-neighborliness" that pervades informal subregional initiatives. Among the recurrent themes that have been discussed among representatives of CEI countries are promotion of their integration into Western structures, in particular the EU,⁴²⁴ and instability in the Balkans.⁴²⁵ CEI has also addressed economic issues,⁴²⁶ and even tackled some of the concrete and intransigent problems in this sphere. For example, a December 1995 meeting brought together the agriculture ministers of the CEI countries.⁴²⁷ Perhaps in response to this trend, the EC Commission decided to step-up its involvement with the CEI.⁴²⁸

all CEI meetings.

⁴²³ Its purpose has been defined functionally. According to Cremasco, the CEI "is intended as a transitory exercise toward more institutionalized organizations" and should address itself to the "solution of those problems which cannot be solved by [sub-subregional] working communities . . . or bilaterally . . . and which do not have a pan-European dimension." In other words, he claims that "the key principle is subsidiarity." Cremasco, *supra* note 419, at 451. CEI's "basic strategy" is to implement "joint projects in various areas of 'low politics'" which would "generate parallel national action processes" and thus lead to "the progressive social and economic homogenization of all involved countries." *Id.* at 452. It is rather odd that Cremasco identifies subsidiarity as a means to achieve homogenization. However, the CEI Venice Policy Document concluded in 1990 also includes "high politics" within the organization's scope. *Id.* at 452 ("The Initiative also foresees a regular exchange of views between the . . . member States on matters of political nature and of common interest. Wherever possible, joint initiatives will be carried out within the latitude permitted by the international obligation of each member State in this respect.") There has been some dispute over whether CEI should discuss questions of national minorities. See OMRI, *supra* note 13, Nov. 11, 1997 (Graz meeting).

⁴²⁴ This was discussed: in 1993 among Austria, Bosnia-Herzegovina, Croatia, the Czech Republic, Hungary, Italy, Macedonia, Slovakia, and Slovenia; in 1995 at the Kesthely Summit (although this was not billed as a CEI summit) among Austria, the Czech Republic, Germany, Hungary, Italy, Poland, Slovakia, and Slovenia; in June 1997 in Portoro among Austria, the Czech Republic, Germany, Hungary, Italy, Romania, Slovakia, and Slovenia, RFE/RL NEWSLINE, *supra* note 41, June 6, 1997, and June 9, 1997. At a special conference on "Civil Society - the Hope for a United Europe" (organized by Slovak President Kovac and held in January 1998, in Levoca), various CEI presidents discussed Slovakia's role in the enlargement process. Slovak Prime Minister Meciar did not attend the Levoca Summit. RFE/RL NEWSLINE, *supra* note 41, Jan. 28, 1998.

⁴²⁵ For example, the situation in former Yugoslavia was discussed in Kesthely in May 1995 (solemn declaration called for a cessation to fighting and affirmed that the return to "barbarity" at the end of the 20th century could not be tolerated) and in Graz in November 1996 (agreeing on reconstruction projects and calling for more aid to Bosnia-Herzegovina), OMRI, *supra* note 13, Nov. 11, 1996. In Sarajevo in June 1997, CEI foreign ministers pledged to send observers to cover Albanian elections. RFE/RL NEWSLINE, *supra* note 41, June 9, 1997.

⁴²⁶ At the Graz meeting (Nov. 9-10, 1996), CEI heads of government discussed "[e]conomic cooperation projects in the region and cooperation with European financial institutions." *CEI Meeting*, EIS EURO-EAST REP., *supra* note 57, Dec. 10, 1996.

⁴²⁷ See *Address by Polish Deputy Prime Minister Jagielinski at the Meeting with Ministers of Agriculture of the CEI Countries* (Warsaw, Dec. 7-8, 1995), Polish Gov't Website, *supra* note 176 ("This is not a matter of creating some kind of pressure group, but of common strategic thinking which would enable the [EU] to understand our arguments and problems . . ."). Another CEEC conference of agricultural ministers took place in Bucharest on May 4, 1997. RFE/RL NEWSLINE, *supra* note 41, May 5, 1997 (not technically a CEI meeting; 19 countries represented, plus U.N. experts).

⁴²⁸ See 1996 Dublin Summit Conclusions, *supra* note 190, at points I.2 and I.4.55 (European Council welcomed report on EU cooperation with CEI which Commission pursuant to request made in Florence). See also *id.* at point I.21 (Commission will submit regular reports to the Council on regional

The CEI appears to be flourishing and even expanding its scope of activities, despite its problems.⁴²⁹ Rather like CEFTA, which is in some sense its formal counterpart, CEI now and then serves as the voice for its members in other international fora.⁴³⁰ These two organizations sometimes appear to overlap, or even to dissolve.⁴³¹ CEI's most noteworthy feature is that it purports to redefine its subregion as a center, and thereby subverts its marginalization.

4. Economic Cooperation Organization

Another informal integrative forum is the Economic Cooperation Organization (ECO),⁴³² which includes Afghanistan, Azerbaijan, Iran, Pakistan, Turkey, and the five Central Asian republics. ECO is the (formerly dormant) economic development counterpart of the Central Treaty Organization (CENTO), which was a military grouping of conservative, pro-Western muslim countries.⁴³³ Despite significant changes affecting CENTO, these countries continue to cooperate within the ECO framework.

While fairly limited in scope and modest in its undertakings, ECO is an important forum for economic cooperation in Central Asia.⁴³⁴ Perhaps, more important at this stage is the stabilizing potential of ECO. Iran and Turkey -- which represent quite different models for development -- are rivals for influence in Central Asia and in the Transcaucasian Republics, and yet they cooperate within the ECO framework. The CIS has criticized ECO,

initiatives).

⁴²⁹ Not surprisingly, CEI has been plagued by political and ethnic tensions among its members, and by financial constraints. Cremasco, *supra* note 419, at 453-54.

⁴³⁰ *Id.* at 452 (noting that CEI countries began submitting common proposals and joint documents to CSCE meetings as early as 1990), and at 457 ("CEI ready and willing to make its voice heard in the international scene and eager to be considered an organization not exclusively devoted at [sic] furthering the technical and economic cooperation of its members").

⁴³¹ See also OMRI, *supra* note 13, Apr. 29, 1996 (inaugural meeting of the Central European Forum, proposed by Poland in Dec. 1995 "to provide a framework for dialogue about EU enlargement"). See also report of Levoca Summit, *supra* note 424.

⁴³² See Hyman, *supra* note 389, at 298. See also *Turkey and the Economic Cooperation Organization* <<http://www.mfa.gov.tr/grupfi/eco.htm>> [hereinafter *Turkey and the ECO*].

⁴³³ The Shah of Iran was a dominant force in CENTO, and urged the establishment of a common market in the region. *Id.*

⁴³⁴ For example, Turkmenistan has called for an early ECO summit to discuss regional pipeline schemes, rather than waiting until the next regularly scheduled meeting in late 1998. OMRI, *supra* note 13, Feb. 10, 1997. See also RFE/RL NEWSLINE, *supra* note 41, Apr. 4, 1997 (Kyrgyz President Akayev says his country considers relations with ECO "extremely important"). ECO has established a new Investment Development Bank, which is under-funded but is a step in the right direction. Hyman, *supra* note 389, at 298. The members took the first step toward trade liberalization by signing a Protocol on Preferential Tariff Agreements, which called for a ten percent reduction in duties. *Turkey and the ECO*, *supra* note 432.

however, and is concerned about losing influence in Central Asia.⁴³⁵ It may well be that Russia's persistent efforts to integrate the Central Asian republics further into the CIS framework are (at least in part) a reaction to the increased activities of ECO. The EU, for its part, has undertaken to "strengthen its influence with the Economic Cooperation Organization."⁴³⁶

5. Carpathian Border Initiatives

Two initiatives in the Carpathian mountain area illustrate further forms of subregional integration taking place in Europe: the Carpathian Euroregion, and the Carpathian Border Region Economic Development Association. Both initiatives are noteworthy because they demonstrate the existence of subregional integration at the level of civil society, unlike the formal and informal initiatives described above, which are limited to participation by members of the central government. Both initiatives draw on the participation of local government and private parties.

The Carpathian border region "can be characterized as an ethnically mixed and financially devastated zone"⁴³⁷ which was more or less ignored by the former regimes because of the politically-sensitive nature of the ethnic minority question.⁴³⁸ Numerous attempts over the past decade to develop economic cooperation in the region failed, in part because they "came from higher levels of authority [which] ignored the particular regional sensitivities" and "gained little or no support from local business professionals."⁴³⁹

The first new initiative is the Carpathian Euroregion, established in 1993, with the "aim of facilitating voluntary cross-border cooperation among local communities" in Hungary, Poland, Slovakia and Ukraine.⁴⁴⁰ In

⁴³⁵ For recent Russian hostility towards developments among certain ECO countries, see Paul Goble, *Former USSR: Analysis from Washington -- Ties that Unbind the CIS*, EEUROPE-NEWS DIG., *supra* note 346, Feb. 21, 1997 (strategic partnership between Azerbaijan and Georgia announced). "During the past three months, the Moscow press has been filled with articles denouncing Georgian and Azerbaijani efforts to increase their cooperation both with each other and with Ukraine and Turkey as well." *Id.*

⁴³⁶ Commission Communication on Central Asia, *supra* note 79.

⁴³⁷ Raymond Becker, *Struggles on These Borders Are for Economic Cooperation*, CIPE (CENTER FOR INTERNATIONAL PRIVATE ENTERPRISE) CEE-REGIONAL NEWSLETTER, Feb. 1996, 3, at 3 <<http://www.usis.usemb.se/ERT/cee/>> [hereinafter CIPE NEWSLETTER]. The percentage of ethnic minorities in the region, principally ethnic Hungarians living in areas lost after World War I, runs as high as 30%. *Id.*

⁴³⁸ Because of the complex ethnic-minority situation, "each nation in the past has chosen to be relatively passive in improving their respective regions, rather than dynamically intervening in what has been perceived as a no win situation." *Id.*

⁴³⁹ *Id.* Surveyed Carpathian entrepreneurs agreed that their economic survival depends on cooperation within their Carpathian region. *Id.*

⁴⁴⁰ Jan B. de Weydenthal, *Controversy in Poland over "Euroregions"*, RFE/RL RESEARCH REPORT, Apr. 16, 1993, at 6. The institutional framework includes a 12-member council (made up of 3 representatives of local and central administrations in each of the four countries), a rotating general

particular, it was intended to "streamline communications in the entire area by setting up telephone exchanges, establishing economic information centers, planning new roads, and opening new border crossings."⁴⁴¹ Its focus was to include not only support for small business, but also "cultural exchanges [and] cooperation among religious organizations."⁴⁴²

The second such initiative, established in November 1994, is the Carpathian Border Region Economic Development Association (CBREDA).⁴⁴³ CBREDA's goals are narrowly focused on facilitating economic development in the private sector, unlike the Carpathian Euroregion's broader mandate. There is, however, an overlap, for example, in the efforts to streamline border-crossings in order to simplify procedures and reduce delays for commercial trade. CBREDA meetings normally involve participation of citizens as well as officials from national, county, and local government.⁴⁴⁴

Both of these Carpathian initiatives demonstrate an attempt to address, at local level and in the context of civil society, some of the same problems that are also the subject of discussions in the formal and informal integration initiatives. Thus, while modest in their scope and surely limited in their success, these subregional integration attempts represent a significant move to decentralize foreign policy.

E. INTERREGIONAL LINKAGES

The current state of East-West European relations is characterized by a high degree of formal and informal interregional⁴⁴⁵ linkage. Indeed, the

secretary, and a permanent secretariat. *Id.* This initiative was supported in its inception by various Western institutions, including the Council of Europe, but not the EU. For a discussion of the role of by the EU and in particular the European Regional Development Fund) see *id.* at 7; see also Thiemo W. Eser & Martin Hallet, *Der Mögliche Beitrag der EG-Regionalpolitik bei einer Ost-Erweiterung der EG: Hilfe or Hindernis?*, OSTEUROPA-WIRTSCHAFT, Sept. 1993, at 195. The establishment of Euroregions has been controversial in Poland, and resulted in a storm of nationalistic criticism. For example, Euroregions have been condemned as "suggesting the idea of [a new] partition of Poland . . . so that its integration with Europe would be made easier." de Weydenthal, *supra*. Moldova, Romania and Ukraine announced their intention to set up two Euroregions. RFE/RL NEWSLINE, *supra* note 41, Apr. 29, 1997.

⁴⁴¹ de Weydenthal, *supra* note 440, at 6.

⁴⁴² *Id.*

⁴⁴³ CIPE NEWSLETTER, *supra* note 437, at 3. CBREDA involves Hungary, Slovakia and Ukraine, but not Poland. *Id.*

⁴⁴⁴ The task of implementing the shared goals has been delegated to the local Economic Development Agencies. CIPE NEWSLETTER, *supra* note 437, at 3-4.

⁴⁴⁵ This term is used in its broadest sense to encompass bilateral and multilateral linkages between countries located in different regions (i.e. the EU and the CIS, but also including EFTA countries, the Middle East, and Eurasia). It also includes linkages which are bilateral but based on a subregional trend (e.g. the CEFTA countries' process of gradually incorporating new members). The emphasis here is on economic linkages, thus the important category of basic treaties settling historic disputes, such as those between Hungary and Romania, OMRI, *supra* note 13, Aug. 15, 1996, are beyond the scope of this article.

profusion of such initiatives can only be hinted at here. This growing interregional web contributes to the ongoing processes of decentralization of power and process, gradual levelling of the trade regime, and disintegration of boundaries. Such linkages are occurring in increasingly contentious contexts, which suggests that this phenomenon marks the cutting edges of integration, where old boundaries are fading and thus enabling further integration to take place.⁴⁴⁶

In its most basic form, the interregionalization phenomenon is evidenced by a proliferation of formal bilateral free trade agreements between CEECs (or between a CEEC and a non-CEEC) located in different regions or subregions. Such interregional agreements are most common between CEFTA member states and other countries.⁴⁴⁷ However, other EA

⁴⁴⁶ See Paul Goble, *Enlarging Eastern Europe*, RFE/RL NEWSLINE, *supra* note 41, June 12, 1997 (analyzing the June 1997 Poland-Ukraine accord).

⁴⁴⁷ Many but by no means all of such agreements tend to be precursors to CEFTA accession. For example, Poland has concluded free trade agreements with Bulgaria, Lithuania and Latvia, all of which aspire to CEFTA membership. See OMRI, *supra* note 13, Apr. 22, 1996 (Lithuania); RFE/RL NEWSLINE, *supra* note 41, Apr. 29, 1997 (Latvia). The Czech Republic concluded free trade agreements with Bulgaria in Feb. 1996, and with Estonia and Latvia in Apr. 1996, OMRI, *supra* note 13, Apr. 16, 1996, and OMRI, *supra* note 13, Apr. 22, 1996. Slovenia has concluded a free trade agreement with Latvia, OMRI, *supra* note 13, Apr. 24, 1996, and with Estonia, OMRI, *supra* note 13, Nov. 26, 1996. Hungary has concluded a free trade agreement with Turkey. OMRI, *supra* note 13, Jan. 9, 1997. Slovakia, which tends to cast its net more widely, is considering free trade agreements with Croatia and Russia. *Association Councils*, *supra* note 136; OMRI, *supra* note 13, Jan. 30, 1997. See also Joe Cook, *Second Among Equals*, BUS. CENT. EUR., Mar. 1997, at 24 (noting that "it's an idea that might backfire"). All CEFTA countries have concluded free trade agreements with all EFTA countries — Iceland, Liechtenstein, Norway and Switzerland — as well. See *Report on the Activities of the European Free Trade Association*, ADOC 7526, Apr. 22, 1996 [hereinafter EFTA Rep.], at point 17.

CEFTA countries have entered into a wide variety of other types of bilateral agreement on an interregional basis. For example: Poland concluded an agreement with Russia on trade and economic cooperation on Aug. 25, 1993, *Joint Declaration by the Prime Minister of the Republic of Poland and the Prime Minister of the Russian Federation on the Development of Economic Co-operation between the Republic of Poland and the Russian Federation* (Feb. 18, 1995), Polish Gov't Website, *supra* note 176; Hungary "embarked on a policy of establishing direct bilateral relations with the various Soviet republics" even before the demise of the USSR, and has concluded a number of agreements with Ukraine, *Hungarian-Ukrainian Relations Continue to Develop*, RFE/RL RESEARCH REPORT, Vol. 2, No. 16, Apr. 16, 1993, 22, at 22; Kazakhstan has concluded cooperation agreements with Hungary, OMRI, *supra* note 13, Feb. 22, 1996; Moldova has concluded cooperation agreements with Hungary, RFE/RL NEWSLINE, *supra* note 41, June 5, 1997; Slovakia has signed some 130 bilateral agreements with Russia (including one "intended to develop and strengthen ties in the legal sphere"), RFE/RL NEWSLINE, *supra* note 41, June 16, 1997; Ukraine has concluded an extensive package of economic agreements with Poland (including an agricultural cooperation program), OMRI, *supra* note 13, Mar. 19, 1997.

countries,⁴⁴⁸ in particular the Baltic States,⁴⁴⁹ are gradually building up their own networks. Bilateral linkages can also be found between CIS member states and other countries.⁴⁵⁰

Interregional activity -- both bilateral and multilateral -- can be found in hot-spots such as the Balkan peninsula and Transcaucasia, among other places. For example, the Greek Development Minister proposed the formation of a Balkan council to encourage regional cooperation in March 1996.⁴⁵¹ In the Transcaucasus, little progress has been made towards subregional cooperation. However, Georgia and Armenia have begun to

⁴⁴⁸ Both Bulgaria and Romania have lagged behind in the interregional linkage process. For example: Bulgaria concluded eight bilateral agreements on trade and industrial cooperation with Belarus in February 1996, OMRI, *supra* note 13, Feb. 22, 1996; Romania concluded a free trade agreement with Turkey, RFE/RL NEWSLINE, *supra* note 41, Apr. 30, 1997. See *Association Councils Stress Positive*, *supra* note 298 (at 1997 meeting of EU-Romania Association Council, the EU welcomed Romania's accession to CEFTA -- as well as its commitment to regional cooperation, especially in the Black Sea Economic Cooperation and in the Central European Initiative -- but urged it to conclude further free trade agreements with other EA countries).

⁴⁴⁹ Consistent with their intense early drive to seek integration into Western European structures, each of the Baltic States concluded a free trade agreement with each of the EFTA countries in 1996. See EFTA Rep., *supra* note 447, at point 17. More recently, the Baltic States have been inching their way (at different speeds) towards CEFTA membership, via conclusion of bilateral free trade agreements with each CEFTA country. Estonia concluded a free trade agreement with the Czech Republic, OMRI, *supra* note 13, Apr. 22, 1996, and has indicated an interest in concluding one with Poland, RFE/RL NEWSLINE, *supra* note 41, May 23, 1997. Latvia has concluded free trade agreements with the Czech Republic and Slovakia, OMRI, *supra* note 13, Apr. 22, 1996, as well as with Slovenia, OMRI, *supra* note 13, Apr. 24, 1996, and with Poland, and is seeking such agreements with other CEFTA countries, RFE/RL NEWSLINE, *supra* note 41, Apr. 23, 1997. Lithuania has concluded free trade agreements with the Czech Republic, Slovakia, and Slovenia, *van den Broek Statement*, *supra* note 198, with Poland, OMRI, *supra* note 13, Apr. 22, 1996, and is reportedly negotiating one with Hungary.

The Baltic States have been building ties to other countries as well. For example, all three concluded a free trade agreement with Turkey in June 1997. See RFE/RL NEWSLINE, *supra* note 41, June 3, 1997 (Latvia); June 4, 1997 (Estonia); and June 6, 1997 (Lithuania). Further, Estonia sought to conclude a free trade agreement with Ukraine, OMRI, *supra* note 13, Feb. 26, 1996, and Latvia has concluded one with Cyprus, OMRI, *supra* note 248, Nov. 16, 1995. Estonia and Ukraine have also concluded agreements on social security and on mutual recognition of certification for goods. OMRI, *supra* note 13, Feb. 10, 1997.

⁴⁵⁰ For example: Armenia and Bulgaria signed a trade and economic cooperation agreement in April 1994, Connelly, *supra* note 408, at 37; Georgia signed four bilateral agreements on economic cooperation with Iran, OMRI, *supra* note 13, Nov. 4, 1996; Kyrgyzstan and Iran signed a variety of economic accords on July 31, 1996, OMRI, *supra* note 13, Aug. 2, 1996; Russia signed four accords with Yugoslavia dealing principally with trade liberalization (including agricultural issues), OMRI, *supra* note 13, Nov. 1, 1996. See also OMRI, *supra* note 13, Dec. 13, 1996 (State Council of Tatarstan signed protocol on interparliamentary cooperation *inter alia* with "the parliaments of . . . Canada, Turkey, and Hungary").

⁴⁵¹ OMRI, *supra* note 13, Mar. 12, 1996. According to the proposal, the council could "gradually widen its activities to include industry, infrastructure policy, and, eventually, 'political cooperation and preventative diplomacy for defusing crises.'" *Id.* In addition, Greece "would support other Balkan countries in their dealings with the EU," which would be invited to send a representative. *Id.* At a November 1997 summit meeting of leaders of Albania, Bosnia-Herzegovina, Bulgaria, Greece, Macedonia, Romania, Turkey, and the Federal Republic of Yugoslavia, Greek Prime Minister Simitis "proposed holding regular Summits and Councils of Ministers covering different aspects of cooperation . . . setting into place a permanent cooperation body in the form of an international secretariat..." AGENCY EUR., Nov. 5, 1997, at 5 (Turkish proposal for the "creation of a Balkan free-trade zone"). *Id.*

discuss economic cooperation, regional conflicts, and the Georgian proposal to create a Transcaucasian interparliamentary assembly.⁴⁵² Transcaucasus countries are also inclined to join in interregional groupings, e.g. the nascent ones involving Azerbaijan, Georgia and Ukraine,⁴⁵³ on the one hand, and Armenia, Iran and Turkmenistan, on the other.⁴⁵⁴ Ukraine is also working with Moldova and Romania to establish a "free economic zone" which might also involve a customs union.⁴⁵⁵ Finally, Ukraine has called for a Baltic-Black Sea Summit in Yalta in 1999.⁴⁵⁶

F. FRINGE BENEFITS: THE IMPORTANCE OF BEING MARGINAL

Taken as a whole, the formal and informal subregional economic initiatives are affecting the ongoing process of East-West European integration in unexpected and salutary ways. The trend towards subregional coalescence creates a counterweight to the power of the big regional initiatives. It has begun to redress some of the imbalances present in the EU's top-heavy vertical integration model,⁴⁵⁷ and to influence the European integration agenda.

The expanding CEFTA framework, in particular, has had a profound impact on the process of East-West European integration, despite all doubts about its viability⁴⁵⁸ and its weak institutional structure.⁴⁵⁹ Indeed, the

⁴⁵² RFE/RL NEWSLINE, *supra* note 41, June 30, 1997. If Lithuania and Poland can establish an interparliamentary assembly, RFE/RL NEWSLINE, *supra* note 41, May 28, 1997 and June 16, 1997, then perhaps it can happen in the Transcaucasus too. See also Liz Fuller, *Introducing the Other Guam*, RFE/RL NEWSLINE, *supra* note 41, Dec. 1, 1997 (Georgia, Ukraine, Azerbaijan and Moldova).

⁴⁵³ See Fuller, *supra* note 390 (noting that Kazakhstan and Uzbekistan have been mentioned as possible future members). This pro-Western initiative appears to contemplate economic as well as military cooperation.

⁴⁵⁴ RFE/RL NEWSLINE, *supra* note 41, Apr. 17, 1997. This cooperation has also been proclaimed "open to other countries." *Id.* A Chinese representative attended the April 1997 meeting.

⁴⁵⁵ RFE/RL NEWSLINE, *supra* note 41, July 7, 1997. See also RFE/RL NEWSLINE, *supra* note 41, Sept. 16, 1997 (Moldova and Ukraine discuss planned customs union).

⁴⁵⁶ RFE/RL NEWSLINE, *supra* note 41, Sept. 30, 1997. See also Paul Goble, *The Spirit of Vilnius*, RFE/RL NEWSLINE, *supra* note 41, Sept. 8, 1997 (noting that "[f]or the first time, the countries between the Baltic and the Black Sea have found a common voice").

⁴⁵⁷ Cremasco, *supra* note 419, at 457 (noting that the "idea of a 'bottom-up' approach to the construction of Europe, preserving its diversity by emphasizing both the [sub]regionalist structure and the possibilities of cooperation, was valuable, particularly in [the] transition phase"). This approach still has much to offer to the CEECs.

⁴⁵⁸ Doubts about CEFTA cover a broad range of issues, but most of these doubts have tapered off since CEFTA's early years. The first type of doubt was economic, and focused on the poor prospects for trade in the wake of the collapse of COMECON. See, e.g., Kolankiewicz, *supra* note 2, at 485-88 (analyzing obstacles to intra-CEFTA trade). As noted *supra* note 308, trade among CEFTA countries has been growing steadily since 1993, which partially explains the waiting line of prospective entrants. However, doubts still persist regarding the willingness of CEFTA countries "to tackle the . . . serious problem of non-tariff barriers." Meth-Cohn & Grandsen, *supra* note 289, at 12 (also noting that surcharges are a concern and that "paper-shuffling to keep importers doing everything but importing has become something of an art in the CEFTA countries"). See also Tomasz Stephen, *EU Joins Line to Criticize Government's New Regulations for Auto Parts Imports*, WARSAW BUS. J., Sept. 9-15, 1996,

significance of CEFTA must be assessed in this larger context. It bears repeating that each CEFTA member state has concluded a Europe Agreement with the EU, and that the CEFTA Agreement is modeled on these virtually identical association agreements. To some extent, therefore, CEFTA is a mere subset of the EU's overarching framework of free trade agreements. But, this fact does not detract from the potential benefits of cooperation among the CEECs which, after all, have more in common with one another than they have with the countries of the EU. These ties result from "geographical location and history as well as from . . . free choice."⁴⁶⁰

1. Economic Benefits

The most fundamental level at which to measure subregional success is in the economic sphere. The "existence of common interests within the economic circles of the countries concerned" has been the root of successful integration in the EU itself.⁴⁶¹ Despite CEFTA's rather sluggish beginnings, trade has increased significantly among member states since 1994,⁴⁶² which partly explains why other CEECs are now clamoring to join. This is a success that can be enjoyed by both the EU -- which pushed the Visegrád countries to concentrate on rebuilding their trade ties -- and by the CEFTA member states themselves, which are reaping the benefits. On the road to development, therefore, subregional integration is proving to be an effective motor.⁴⁶³ Still, the overt goal of CEFTA is not to substitute for integration into the EU, but rather to "gear up" the subregional economies, and thereby improve their chances of merging onto the EU Autobahn.

The economic benefits of subregional cooperation -- particularly

at 4 (Polish government suddenly introduced controversial regulations requiring permits for the duty-free import of auto parts).

The second kind of doubt was political, and focused on the Visegrád countries' yearning to escape from the East and "return to the West." See, e.g., Bugge, *supra* note 168; Kolankiewicz, *supra* note 2, at 483-85. See further discussion *supra* in note 307.

⁴⁵⁹ Perhaps CEFTA's effectiveness stems from the fact that it is "above all . . . a process, not . . . an organization." Vachudova, *supra* note 127, at 42. The value of communication should not be underestimated. See, e.g., *Bitter Pill*, BUS. CENT. EUR., Feb. 1997, at 13 (subregional groupings such as CEI, CBSS and BSEC "help foster communication. True, they don't offer any concrete security guarantees. But by binding regional interests together they do help ensure that no-one is left out in the cold."). See also Hartnell, *Long and Winding Road*, *supra* note 1, at 214 ("information is the key to bridging . . . gaps").

⁴⁶⁰ *Statement of Polish President Walensa* (Budapest, May 25, 1995), Polish Gov't Website, *supra* note 176.

⁴⁶¹ Mihály Simai, *Changing Views in Hungary on the European Community* 85, at 87 in *THE EXTERNAL RELATIONS OF THE EUROPEAN COMMUNITY: PERSPECTIVES, POLICIES AND RESPONSES* (Frans A.M. Alting Geusau ed., 1974).

⁴⁶² See *supra* note 308.

⁴⁶³ Some go so far as to predict that "[i]n a longer term perspective of 20-30 years, gradually one will be able to speak about a *reintegration of the CEECs*" with one another. Lawniczak, *supra* note 290 at 144 (emphasis added).

within the CEFTA framework -- do not stop at increased trade among member states. Coalescence has narrowed the gap reflected in the trade paradox. By joining their voices, the CEFTA countries have been able to exert leverage and influence the EU's policy towards them within the EA association framework.⁴⁶⁴ For example, the CEFTA countries have pushed consistently and successfully to obtain improved access to the EU market,⁴⁶⁵ especially for sensitive exports such as textiles, agricultural and ECSC products.⁴⁶⁶ Further, the CEFTA countries have succeeded in some of their

⁴⁶⁴ This has happened notwithstanding Commissioner Andriessen's dismissive statement that "cooperation between these countries would be meaningless, because [they] have the best possible relations with the EC and any regional initiatives would not improve the situation." *WARSAW VOICE*, 1991, *quoted in* Vachudova, *supra* note 127, at 46. Visegrád countries also pressed such claims in the context of their bilateral relations with the EC. *See, e.g., First Meeting of the EC-Hungary Joint Committee of the Interim Agreement*, IP (92) 508 (1992) ("parties exchanged views as regards the possibilities to accelerate tariff dismantlement"); *First Meeting of the EC-Poland Joint Committee of the Interim Agreement*, IP(92) 536 (July 1, 1992) ("Polish side presented a list of . . . products for which it wishes an accelerated tariff dismantlement. The Community asked for selectivity in this respect.").

⁴⁶⁵ For example, the Visegrád countries emphasized the need to "improve access to Community markets, regional cooperation, and triangular operations as a means of furthering economic development." Visegrád Memorandum, *supra* note 130, *reported in* BULL. EUR. COMMUNITIES, Oct. 1992, point 1.4.6. At the Oct. 28, 1992, London Summit, the EC agreed to "step up cooperation, notably in liberalizing and opening up markets." BULL. EUR. COMMUNITIES, Oct. 1992, point 1.4.7. The Commission Guidelines, *supra* note 29, agreed that the Community must "take appropriate steps to improve their access to the Community markets" and "proposed a number of measures to accelerate the dismantling of Community customs duties and quantitative restrictions . . . in order to help the countries concerned to increase exports and raise resources to fund their development and foreign debt repayments." BULL. EUR. COMMUNITIES, Apr. 1993, point 1.3.5. Impatient for action: the Visegrád countries renewed their call for improved access to EC markets in June 1993. Vachudova, *supra* note 127, at 47.

The first real breakthrough came at the June 1993 Copenhagen Summit. Copenhagen Summit Conclusions, *supra* note 31, at point I.13 ("The European Council, recognizing the crucial importance of trade in the transition to a market economy, agreed to accelerate the Community's efforts to open up its markets."). Concrete steps were proposed in the Commission Communication of 7 July 1993 to the Council on the Follow-up to the European Council in Copenhagen: Market-access Measures to Help the Central and East European Countries, COM(93)321 [hereinafter Commission Communication on Market-Access], and implemented by: Council Decision 93/421/EEC of 19 July 1993 on the Provisional Application of the Additional Protocols to the Interim Agreements on Trade and Trade-related Matters between the EEC and the ECSC, of the One Part, and Certain Third Countries (Hungary, Poland, and the Former Czech and Slovak Federal Republics), of the Other Part, and to the Europe Agreements Between the European Communities and Their Member States and the Same Countries, 1993 O.J. (L 195) 42; Council Regulations 2232/93-2235/93 of 5 August 1993 Amending Regulations 3918/92, 518/92-520/92 Opening and Providing for the Administration of Community Tariff Quotas and Ceilings for Certain Agricultural and Industrial Products, 1993 O.J. (L 200). One "element of the additional trade concessions [was] the early abolition of customs duties on imports into the Community." BULL. EUR. COMMUNITIES, July-Aug. 1993, point 1.3.10. *See also* 1994 O.J. (L 25) 3.

⁴⁶⁶ The EU has been slowly forthcoming with concessions in these sectors. As described *supra* in note 465, the Commission Communication on Market-Access recommended and the Council approved certain improved trade concessions, in particular:

Increases in the levels of quotas and some tariff ceilings will . . . proceed faster than planned in the Interim Agreements. Levies or duties paid in connection with the quotas on agricultural products will be reduced by 60% six months earlier than planned. Additional trade concessions will improve access to the Community market for textiles and ECSC iron and steel products originating in the countries in question.

requests for reform of the PHARE program.⁴⁶⁷

One major consequence of subregional integration within the broader European regional framework is the move towards standardized, cumulative rules of origin.⁴⁶⁸ Regional (or "diagonal") cumulation is vital

BULL. EUR. COMMUNITIES, July-Aug. 1993, point 1.3.10. Concessions were granted, but subsequently rolled back. See Saryusz-Wolski, *supra* note 175, at 3 (noting that "[f]rom 1996 onwards, tariff quotas for most of the CEEC agrarian imports will increase by five per cent annually, instead of 10 per cent, while several products have been exempted from the reduction in customs duties"). With regard to ECSC products, see BULL. EUR. COMMUNITIES, July-Aug. 1993, point 1.3.11, and BULL. EUR. COMMUNITIES, Sept. 1993, points 1.3.9-10 (regarding ECSC approval of the trade concessions). With regard to textiles, the Commission Communication on Market-Access, *supra*, called for "steps to be taken with regard to outward processing arrangements." BULL. EUR. COMMUNITIES, July-Aug. 1993, point 1.3.10. Such arrangements "determine the conditions under which products may be reimported into the Community after working or processing in a third country." BULL. EUR. COMMUNITIES, July-Aug. 1993, point 1.3.100. This proposal was subsequently implemented by Council Regulation 3036/94 of 8 December 1994 Establishing Economic Outward Processing Arrangements Applicable to Certain Textiles and Clothing Products Reimported into the Community after Working or Processing in Certain Third Countries, 1994 O.J. (L 322) 1.

Not all adjustments to the agreements between the EU and its associates have resulted from internal pressures. See, e.g., Draft Agreements on Adjusting the Europe Agreements and Interim Agreements Between the European Communities and the Associated Countries as a Result of Enlargement and the Conclusion of the Uruguay Round, BULL. EUR. UNION, Mar. 1995, point 1.4.53 (Council authorized Commission to negotiate adjustments needed to rebalance the agricultural component of the agreements and further develop trade between the parties); BULL. EUR. UNION, Nov. 1995, point 1.4.50 (additional negotiating directives to improve on the concessions on farm produce).

⁴⁶⁷ Visegrád Memorandum, *supra* note 130. See also Conclusions of the Presidency (Edinburgh European Council, Dec. 1992), BULL. EUR. COMMUNITIES, Dec. 1992, points 1.1-88, at point 1.79 ("more flexible guidelines agreed for the PHARE programme"). The Commission Guidelines, *supra* note 29, provide that the Community must "take appropriate steps to improve . . . the effectiveness of the Community programme of economic assistance." The Commission proposed that "the granting of PHARE allocations be made . . . on a multiannual basis, . . . in order to boost the capacity of the countries concerned to attract investment [and in] the field of infrastructure, . . . for PHARE allocations to be made available to provide the resources needed to give the countries access to the international loans they need for major projects." BULL. EUR. COMMUNITIES, Apr. 1993, point 1.3.5. See Commission Decision of 6 July 1993 Approving a Global Authorization for a Multidisciplinary Technical Assistance Fund for Certain Countries of Central and Eastern Europe, BULL. EUR. COMMUNITIES, July-Aug. 1993, point 1.3.8 (allocating an additional ECU 10 million to "ensure rapid and effective use of technical assistance appropriations by allowing . . . projects to be dealt with without delay, by making it possible to cope flexibly and rapidly with urgent demand from the recipient countries for training and trade and investment promotion, and by improving the Commission's ability to examine and tackle in an appropriate and rapid manner any pressing problems which might arise in those countries and enable it to take specific action to organize the aid efficiently.").

⁴⁶⁸ See generally Wolfgang W. Leirer, *Rules of Origin under the Caribbean Basin Initiative and the ACP-EEC Lomé IV Convention with the GATT Uruguay Round Agreement on Rules of Origin*, 16 U. PA. J. INT'L BUS. L. 483 (Fall 1995). In simplified terms, the issue is whether a good that originates 50% in Hungary and 50% in Poland is entitled to the preferential duty rate fixed by the applicable EA for that good if it originated 100% in one or the other country. Where cumulation is allowed, imported inputs (e.g. Polish goods imported into Hungary for the production in Hungary of goods) which are later exported to another member country (e.g. Slovakia) must be treated as a product originating in Hungary (rather than in Poland). See Richter, *supra* note 290 at 7. Without the possibility of cumulation for goods that come from two (or more) countries, each of which has a free trade agreement with the EC, the preferential treatment is lost. This result is contrary to good economic sense, which dictates that investment and restructuring in Central and Eastern Europe should take advantage of and build on the synergistic possibilities already present in the region. In addition, this result is contrary to the EU's stated intention to encourage cooperation among CEECs. See, e.g., Commission Guidelines, *supra* note 29, which provide in this regard that the "Community should encourage more rapid integration of the

to the development of subregional synergies, since it would enable joint CEFTA products to enjoy the preferential status extended by the EU on a bilateral (EA) basis to the individual CEFTA member states.⁴⁶⁹ The Visegrád Group began pushing the EU early to permit regional cumulation for CEFTA countries,⁴⁷⁰ but it was some time before the European Council finally heeded these persistent calls. At its Essen Summit in December 1994, the European Council committed itself to take concrete steps towards broad cumulation of origin for goods coming from the Visegrád Group, Bulgaria, Romania, and Slovenia.⁴⁷¹ Progress was slow in coming,⁴⁷² but a Pan-European diagonal cumulation system has finally been put in place.⁴⁷³

An even more profound consequence is that the Central and East

economies of the [Visegrád] countries themselves." See also Barcelona Declaration, *supra* note 156 (Work Programme includes "harmonizing rules and procedures in the customs field, with a view in particular to the progressive introduction of cumulation of origin; in the meantime, favourable consideration will be given, where appropriate, to finding *ad hoc* solutions in particular cases").

⁴⁶⁹ See Lawniczak, *supra* note 290, at 157 (noting that the effect of cumulation would be "to 'multi-lateralize' the agreements so far concluded by the EC and EFTA, on a country-by-country basis with the CEECs"); Richter, *supra* note 290, at 7 (noting that diagonal cumulation "will enable a deeper and better division of labour among the firms of the countries involved").

⁴⁷⁰ Visegrád Memorandum, *supra* note 130.

⁴⁷¹ Essen Summit Conclusions, *supra* note 29. See also Pre-accession Progress Report, *supra* note 29 (indicating that the "Commission will endeavour to complete negotiations rapidly on the cumulation of rules of origin, in accordance with the conclusions of the Essen European Council").

⁴⁷² See Decision 1/95 of the EU-Hungary Association Council, 1995 O.J. (L 201) 39 (amending Protocol 4 to the EA to provide for cumulation with Poland and with the Czech and Slovak Republics); BULL. EUR. UNION, Nov. 1995, point 1.4.46 (Pre-accession Progress Report indicated, as of late 1995, that the Commission would "endeavour to complete negotiations rapidly on the cumulation of rules of origin, in accordance with the conclusions of the [Dec. 1994] Essen European Council"); Meeting of the EU-Romania Association Council, BULL. EUR. UNION, Nov. 1995, point 1.4.67 (noting that "some of the short-term measures decided on by the Essen European Council were already being implemented [including] . . . extending the diagonal cumulation of origin arrangements for the Visegrad countries . . . to Bulgaria and Romania"); Decision 4/96 of the EU-Poland Association Council, 1996 O.J. (L 208) 33 (amending Protocol 4 to the EA); *Association Councils Stress Positive*, *supra* note 298 (reporting that the February 1997 meeting of the EU-Bulgaria Association Council agreed to amend Protocol 4 and thereby extend to Bulgaria the cumulation system that is already in place for the Czech Republic, Hungary, Poland, Romania, and Slovakia); *Association Councils*, *supra* note 136; BULL. EUR. UNION, Apr. 1997, point 1.4.54 (EU-Hungary Association Council "noted the decisions taken since its last meeting regarding the cumulation of rules of origin"). See also BULL. EUR. UNION, Apr. 1997, point 1.4.44 (noting that cumulation of rules of origin has been introduced into the revised Lomé Convention).

⁴⁷³ "The Pan-European cumulation zone comprises 15 members of the European Union, four members of EFTA and ten eastern EU associated countries (among them the five CEFTA members) which are associated members of the [EU]." Richter, *supra* note 290, at 7. See, e.g., Decision 1/97 of the EU-Poland Association Council Amending Protocol 4 to the Europe Agreement, 1997 O.J. (L 221) 1 (whereas "an extended system of cumulation is desirable making possible the use of materials originating in the European Community, Poland, Hungary, the Czech Republic, the Slovak Republic, Bulgaria, Romania, Latvia, Lithuania, Estonia, Slovenia, the European Economic Area, Iceland, Norway or Switzerland, in order to facilitate trade and improve the effectiveness of the Agreement, modifications to the definition of the concept of originating products are required"). However, the Pan-European cumulation system was not completely implemented on Jan. 1, 1997, since Hungary and Poland each required a transition period to adjust their rules permitting customs drawback. See Richter, *supra* note 290, at 7. See also CEFTA Website, *supra* note 289 (regarding implementation of the Pan-European cumulation system within CEFTA).

European (and particularly CEFTA) countries have recognized the possibility for integrating further and faster at subregional level than is possible within the EU's association framework.⁴⁷⁴ There is evidence of such dynamic subregional economic integration. CEFTA member states, for example, have been gradually moving towards greater integration in regard to agricultural goods⁴⁷⁵ and tackling tricky technical problems. Furthermore, CEFTA member states have been actively considering whether to expand the scope of the CEFTA Agreement to include trade in services, free movement of capital, transport, telecommunications, energy, infrastructure, and privatization.⁴⁷⁷

While the success of proposals to expand CEFTA's scope or to deepen its integration is not yet assured, it is entirely possible that the CEFTA Agreement -- which presently constitutes a diluted version of the EAs and an even more diluted version of the EC Treaty -- might partially overtake either of its predecessors. CEFTA member states could move beyond mere trade liberalization, and cooperate in ways that outstrip the level of integration achieved by the CEECs under their respective EAs with

⁴⁷⁴ Compare C. Fred Bergsten, *APEC and World Trade: A Force for Worldwide Liberalization*, FOR. AFF., May/June 1994, at 20 (arguing that APEC offers "a wholly new model of regional economic cooperation: a steady ratcheting up of trade liberalization between the regional and global levels" since its members are likely to address at regional level issues which are not yet ripe for agreement at the global level).

⁴⁷⁵ The CEFTA Agreement establishes a network of bilateral concessions for trade in agricultural goods and calls upon the member states to "examine the possibilities of granting each other further concessions." CEFTA Agreement, *supra* note 289, art. 12(2). The member states agreed at the Poznań Summit on Nov. 25, 1994 to seek to reduce duties on agricultural goods. Poznań Summit Declaration, *supra* note 296. In November 1995, they signed a protocol on agricultural trade which, according to Polish Deputy Prime Minister and Minister of Agriculture Jagielinski:

[P]rovides for a significant reduction of tariffs in agricultural and food trade among [CEFTA] countries as of January 1, 1996. For nearly one half of Polish agricultural imports from these countries tariffs have been reduced to zero. The agreement is an important step towards liberalisation of agricultural and food trade after January 1, 1998 within CEFTA. The agreement also signifies a great step forward in economic relations in Europe. It also constitutes a serious test for the agricultural sectors in these countries as regards matching up to international competition, as well as an important experience before accession to the European Union.

Statement by Polish Deputy Prime Minister and Minister of Agriculture Jagielinski to Club of Brussels Conference (Feb. 22-23, 1996), Polish Gov't Website, *supra* note 176. See also *supra* note 328 (Baltic States free trade agreement for agricultural products concluded in 1996).

⁴⁷⁶ For example, at their November 1995 Brno Summit, the CEFTA member states agreed *inter alia* to speed up talks on certifying industrial and agricultural products (including mutual recognition of certificates), and to simplify and standardize CEFTA's rules of origin. Brno Summit Declaration, *supra* note 296. Problems related to technical barriers to agricultural trade were discussed further in Budapest in June 1997, at a multilateral conference involving CEFTA members, plus Bulgaria, Croatia, and Lithuania. EEBIC Website, *supra* note 289.

⁴⁷⁷ See, e.g., Bratislava Summit Declaration, *supra* note 306. The Polish government, which prepared the proposal on capital, suggested setting up a regional trade and investment bank. Brno Summit Declaration, *supra* note 296.

the EC.⁴⁷⁸ It is already clear that CEFTA countries bent on achieving further integration will not be deterred by the inability to achieve agreement with all CEFTA member states.⁴⁷⁹ Such subregional integration could drive further integration at the regional level, and thereby alter the course of the top-down integrative forces emanating from Brussels (and, in the CIS, from Moscow).⁴⁸⁰

Subregional economic integration not only furthers the cause of transition in Central and Eastern Europe, but also demonstrates that European integration can proceed not just vertically, from the top down and according to an agenda set by the EU (or by Moscow), but upon multiple fronts, and at different levels, corresponding to particular needs. Jacques Delors has aptly equated regionalization (and, by extension, sub- and sub-subregionalization) with "worldwide subsidiarity."⁴⁸¹ The existence of integration initiatives at the low end of the food chain -- such as the Czech-Polish agricultural accord -- evokes the prospect of integrative pressure from the bottom up.

2. Political Benefits

The coalescence of formal and informal subregional integration initiatives has important political implications, both within Central and Eastern Europe, and beyond it.⁴⁸² Not all CEECs are as enthusiastic as the Poles about the prospect of subregional cooperation.⁴⁸³ Still, the vital

⁴⁷⁸ See, e.g., *Address of Polish Foreign Minister Bartoszewski to Polish Diet* (Warsaw, May 24, 1995), Polish Gov't Website, *supra*, note 176 (one reason Poland "greatly appreciates" subregional cooperation is that it provides a forum of cooperation that goes beyond today's frames of the European Union").

⁴⁷⁹ For example, the Czech Republic and Poland concluded a far-reaching bilateral agreement on cooperation in agriculture and the food industry in August 1995. They asserted that they were "forced" to conclude this agreement outside the CEFTA framework because of "Hungarian intransigence". See Polish Gov't Website, *supra* note 176.

⁴⁸⁰ Francis Harris, *A Different Drum*, BUS. CENT. EUR., Dec. 1997/ Jan. 1998, at 17 (questioning whether Central Europeans "are now free to decide their own government policies, or have they just swapped Moscow for Brussels?").

⁴⁸¹ Jacques Delors, *The Future of Free Trade in Europe and the World*, 18 FORDHAM INT'L. L.J. 715, 724 (1995). See also Flora Lewis, *quoted in Cremasco*, *supra* note 419, at 451 ("aggregate the capacity for dealing with issues that are insoluble on a single nation basis, and not yet feasible for a Europe-wide solution").

⁴⁸² Compare Cremasco, *supra* note 419, at 458-459 (noting that while "it is difficult to predict whether the . . . cooperation will eventually agonize in the routine of the ministerial meetings, or whether it will be able to break the impasse and continue its slow cooperation process . . . [t]hese organizations . . . represent [an] attempt of small regional entities to build a pragmatic set of cooperation schemes capable of having a significant political meaning and scope").

⁴⁸³ The Polish Government has been the strongest supporter of CEFTA and subregional cooperation. Kolankiewicz, *supra* note 2, at 484 (Polish position is "maximalist and intrinsic"). See also Vachudova, *supra* note 127, at 46 (observing that the Poles have most fervently believed that "by crafting a joint approach toward the Community, the Visegrád countries can substantially increase their bargaining power as well as their general political standing in Europe").

importance to all CEECs of participation in the process of European transformation should not be underestimated.⁴⁸⁴ "[A] common identity consisting of something more than post-communist societies awaiting European membership. . . could. . . jeopardize. . . enlargement of the Union."⁴⁸⁵

Coalescence has nurtured self-confidence and sophistication in the countries of Central and Eastern Europe, in addition to demonstrating the benefits of subregional cooperation. These effects are visible in the relations of the CEECs to one another, in their relations to the big regional powers in Europe, and also in their dealings with other countries outside Europe.⁴⁸⁶

It bears repeating that the formal and informal initiatives in Central and Eastern Europe all have weak, intergovernmental institutions, with no power to bind member states without their consent. Still, there is evidence of growing confidence in the cooperative process, if not also in the new institutions themselves. This is especially visible in the context of CEFTA and the CEI, where there are signs of institutional overlapping (if not convergence).⁴⁸⁷

The most dramatic effects of coalescence are found in its effect on the relations between the EA countries (and particularly the CEFTA countries) and the EU. The current level of confidence must be measured against the early years of CEFTA's operation, when the member states cautiously avoided developing a common voice or otherwise expanding the

⁴⁸⁴ See, e.g., Olesky CEI Speech, Oct. 1995, *supra* note 421 ("Every platform for the exchange of ideas and opinions is important in the face of the transformations taking place in [CEI] countries As countries of the region we have the right to speak out and to present our views on how we want to see a future united Europe, how we want to see the structure of security, co-operation and prosperity. . . . In these transformation processes every grouping has a role to play . . ."); *Statement of Polish Prime Minister Olesky at the Meeting with Ministers of Agriculture of the Central European Initiative Countries* (Warsaw, Dec. 7-8, 1995), Polish Gov't Website, *supra* note 176 (noting that CEECs are "meeting this week in Warsaw under CEI banner, next week in Madrid at European Council summit, later in CBSS in Stockholm, yesterday conference of heads of parliaments of EAs in Warsaw . . . I mention all these events . . . to show that such meetings have enormous, inestimable importance for all of us, because they demonstrate that we are building a different Europe, that we are finally getting used to a Europe without divisions.").

⁴⁸⁵ Kolankiewicz, *supra* note 2, at 480. The author further notes that "(w)hat each country lacks individually could be compensated for collectively." *Id.*

⁴⁸⁶ The CEFTA Agreement contains no common provisions on commercial policy with third countries, not has there been any reported discussion of the possibility of moving towards a customs union. Notwithstanding this lack of external competence, CEFTA has undertaken to enter into discussions with other trading blocs, such as NAFTA. See, e.g., Polish Gov't Website, *supra* note 176, May 26, 1993 (Polish Prime Minister Olesky discussed CEFTA-NAFTA economic cooperation with Canadian Foreign Trade Minister Mac Laren. Russian Prime Minister Chernomyrdin requested a "dialogue of cooperation" with CEFTA in September of 1996. See The Warsaw Voice Website <<http://www.contact.waw.pl/pl-iso/voice/v413/new01.htm>>).

⁴⁸⁷ See, e.g., *supra* note 304 (the Czech and Slovak Republics chose to resolve a dispute between them at the CEFTA Brno Summit, even though this dispute clearly did not fall within CEFTA competence). Further evidence of cross-over can be seen in the occasional discussions of technical CEFTA-like trade issues within the broader, informal CEI framework.

scope of their cooperation, largely because each of them was preoccupied with asserting itself individually *vis-à-vis* the EU and trying to distance itself from the pack in the race to accession. While the EA countries still insist that the EU must consider each of them on their individual merits in accession negotiations, they no longer hesitate to assert themselves as a group. This tendency may begin to compensate for the lack of any meaningful political opposition to EU accession at home.⁴⁸⁸

In the context of relations between the EU and the associated countries in Central and Eastern Europe, coalescence has served to ameliorate the aspirational, participation and sovereignty paradoxes, and to tap the energy inherent in the cooperation-competition paradox. The most visible benefit of increased cooperation among the CEECs (particularly in the CEFTA framework) is their success in arguing for better conditions within the EA framework.

The relations between the EU and the aspirants in Central and Eastern Europe (in particular the CEFTA member states) have been characterized by frustration on both sides. The Visegrád Group (which constitutes the core of CEFTA) has pushed the EU hard for concrete commitments on eventual membership. The EU, caught between its good intentions, on the one hand, and its own internal political and economic difficulties, on the other, has been forthcoming, although not forthcoming enough to alleviate the pressures on the governments in the associated CEECs, which therefore continue their vigilant efforts to persuade the EU to take them more seriously.⁴⁸⁹ These efforts have resulted in the elaboration of criteria for membership specifically requested by the EA countries⁴⁹⁰ and the gradual strengthening and deepening of political dialogue.⁴⁹¹

Considering the weak position of the EA countries *vis-à-vis* the EU,⁴⁹² they would be wise to consider the benefits of further cooperation (or

⁴⁸⁸ See Báta & Richter, *supra* note 1, at 20 (noting that "[p]olitically relevant opposition to EU membership like the well-organized alliance of various political and economic forces in all former CEFTA countries . . . does either not exist in the CEECs or is still of irrelevant leverage").

⁴⁸⁹ In Dec. 1994, the (then) EA countries had to plead for an invitation to attend the Essen European Council which had been touted as the summit that would make major decisions about Eastern enlargement. The invitations were finally issued just days before the actual meeting. See Lionel Barber, *EU to Tackle Blueprint for Enlargement*, FIN. TIMES, Nov. 28, 1994, at 2 ("summit outlook has been clouded by the apparent German decision not to invite the [CEECs] to Essen").

⁴⁹⁰ The Visegrád countries pressured the EC for both of these in the 1992 Visegrád Memorandum, *supra* note 130, and again at a joint meeting on June 7, 1993. Vachudova, *supra* note 127, at 46-47.

⁴⁹¹ See discussion *infra* in notes 260-63.

⁴⁹² As mentioned *supra* note 167, the EAs "paradoxically . . . seriously weakened the [EA countries'] bargaining position, because the main and perhaps only relevant asset that [they] were able to offer was free access for EU exporters to domestic CEEC markets." Báta & Richter, *supra* note 1, at 24. This dilemma becomes more acute as time passes and the transition period for full implementation of the movement of goods provisions of the EAs nears its end. Once the free trade areas called for by the respective EAs are in place, the EU has achieved its pan-European free trade area, and

at least coordination) as they prepare to undertake accession negotiations. When the EU commences negotiations with the Czech Republic, Estonia, Hungary, Poland and Slovenia, it is likely to offer a fairly standard set of accession conditions to all at the outset, and then rely on parallel negotiations with each EA country to tailor a suitable compromise. In this scenario, "[d]iverging individual CEEC positions on important issues may negatively influence CEEC bargaining power: the less demanding CEEC negotiators could provide precedents for the lowest [set of accession criteria] to which EU negotiators could refer in other bilateral relations. Thus, the 'softest' of the CEECs may lower the chances [for] the less conciliatory ones."⁴⁹³ There have been calls for "joint behavior rules" and even for a "joint accession strategy."⁴⁹⁴ Joint behavior rules could serve, at the very least, to prevent "non-coordinated concessions by one or more applicant countries."⁴⁹⁵ As proposed by Richter, a joint accession strategy would "necessarily be subordinated to national accession strategies," but nonetheless useful: to "help each country . . . identify its optimal set of accession conditions;" where expedient and possible to coordinate negotiation strategy and tactics;" and to identify issues and coordinate accession strategy in regard to "possible derogations from general rules."⁴⁹⁶ In his view, "[o]ccasional meetings would most likely not be sufficient for a really effective coordination The solution could be either frequent regular meetings of delegations of the countries involved or an institutionalized form of cooperation with a council for coordinating accession strategies."⁴⁹⁷

Signals from "fast track" countries concerning readiness to coordinate their accession negotiations have been mixed. On the one hand, there has been some talk of "reactivating" the Visegrád Group.⁴⁹⁸ More concretely, the Prime Ministers of the Czech Republic, Hungary and Poland "decided to cooperate more and coordinate their respective positions as

might not see fit to make substantial financial commitments to the CEECs. And yet, from the perspective of the EA countries, their agreement to expose their economies "to the ravages of open competition" were secured by the prospect (if not the promise) of "some sort of payback under the [EU's] structural, regional or cohesion funds programmes." *Long Sprint*, *supra* note 183, at 40. Thus, the prospect of "second-class membership" looms ever larger. *Id.* The EA countries are in a precarious position, since they must fully implement the EAs in order to stand a chance to proceed to accession negotiations with the EU. See, e.g., RFE/RL NEWSLINE, *supra* note 41, Apr. 25, 1997, and Apr. 30, 1997 (Poland "denounced some EU states for taking unfair advantage of . . . Poland's weak negotiating position to enforce their demands over trade issues" just prior to the annual meeting of the EU-Poland Association Council).

⁴⁹³ Bárta & Richter, *supra* note 1, at 29.

⁴⁹⁴ Richter, *supra* note 289, at 22.

⁴⁹⁵ *Id.*

⁴⁹⁶ *Id.*

⁴⁹⁷ *Id.*

⁴⁹⁸ RFE/RL NEWSLINE, *supra* note 41, July 3, 1997 (Hungarian Prime Minister Horn to Polish Prime Minister Cimoszewicz).

much as possible in order to facilitate and accelerate the membership negotiations [I]t was agreed that the negotiators of the three applicant countries, but also the Foreign Ministers, would step up their working contacts to mutually inform one another of the state of negotiations. Institutionalization of this cooperation is not planned, however.”⁴⁹⁹ On the other hand, the cooperative spirit does appear to have its limits. For example, CEFTA prime ministers meeting in September 1997 “on the request of the Hungarian government . . . did not bind themselves . . . to provide mutual support in the process of joining the [EU].”⁵⁰⁰ Subregional coalescence is thus likely to play an ongoing role in the context of accession negotiations with the EU.

Perhaps the most remarkable consequence of subregional coalescence is that the Central and Eastern European countries, which lack adequate participatory rights within the EU's association framework,⁵⁰¹ have created fora in which they do have full participatory rights and where they can play a role in setting the agenda for European integration. This is not to overstate the case by asserting that the tail is now firmly wagging the dog. In fact, all formal and informal initiatives involving EA countries are indisputably designed to further the aim of joining the EU as soon as possible. Still, the growing importance of these initiatives reflects a real turn of the tide.

Since 1995, the EU has realized that it should play a more active role in some of the subregional initiatives (for example, the Council of Baltic Sea States and the Central European Initiative) and has commenced sending representatives of the Commission -- and even the Troika -- to key meetings. This suggests a recognition by the EU that it is no longer fully in charge of the agenda of European integration. Agenda-setting has become multipolar.

In conclusion, economic and political success at subregional level, together with the passage of time and growing disappointment in the EU on the part of the Central and East European countries, has resolved the competition-cooperation paradox in favor of strategic cooperation. It is equally apparent, however, that the competition-cooperation paradox retains significant force. While the “in” countries can now see fit to cooperate, at least with some members of their group, competition between “in” and “out” countries, as well as among “out” countries, will be exacerbated by the EU's decision to create a two-tier enlargement process. In the face of this divisive situation, and of the certain delays ahead on the road towards union, the

⁴⁹⁹ AGENCE EUROPE DOCS., Sept. 4, 1997, at 14.

⁵⁰⁰ Potrero Summit Declaration, *supra* note 297.

⁵⁰¹ Thus, for example, they were excluded from the IGC, and have no right to participate in other EU discussions that fall outside the Structured Dialogue. See discussion *supra* Part III.B.3.

"ins" would do well to remember, and build upon what they have already achieved through strategic cooperation.

The coalescence of formal and informal integration initiatives has given marginal actors leverage with which to move the big regional trade blocs. While it would be over-reaching to speculate that a major power shift has occurred or is imminent, it is indisputable that even small shifts can be turned to real advantage by strategic actors.

V. BROADER IMPLICATIONS OF SUBREGIONAL COALESCENCE

The phenomenon of subregional coalescence must be examined in the context of both wider regionalization and globalization. The global framework for analysis of both regional and subregional integration is provided by the World Trade Organization (WTO).⁵⁰² Many CEECs have already joined the WTO,⁵⁰³ while others are in some stage of negotiations toward membership.⁵⁰⁴

The WTO has begun taking a harder look at the issues raised by the proliferation of regional (and by definition subregional) arrangements which provide for the establishment of free trade areas and, to a lesser extent, customs unions. There is alarm over the growth of such preferential trading arrangements, because they tend to undercut the most-favored-nation principle, which lies at the heart of the multilateral trade regime.⁵⁰⁵ Article XXIV of the GATT permits such regional arrangements to operate as

⁵⁰² GATT, *supra* note 314.

⁵⁰³ "Czechoslovakia was a founding member of the GATT, and maintained its membership even after the introduction of a strict centrally planned economy . . . Hungary, Poland and Romania already made the first steps towards the GATT in the late 1950s." Peter Naray, *Integration of Central and Eastern Europe into the GATT System*, BUTTERWORTH'S J. INT'L BANKING & FIN. L. 425, 425 (Oct. 1993). Poland became a member of the GATT on Oct. 18, 1967; Romania on Nov. 14, 1971; Hungary on Sept. 9, 1973. 2 ANALYTICAL INDEX: GUIDE TO GATT LAW AND PRACTICE 1136 (1995) [hereinafter GATT ANALYTICAL INDEX]. The Socialist Federal Republic of Yugoslavia joined the GATT on Aug. 25, 1966. *Id.* In the wake of the changeover from centrally planned to market economies, these countries "asked for changes in their protocols of accession with the objective of eliminating obsolete or inoperative provisions and terminating their 'second class' participation in GATT." *Id.* at 426. The Czech and Slovak Republics (as successor states to Czechoslovakia) became contracting parties to the GATT on Apr. 15, 1993. *Id.* at 427. Slovenia became a member on Oct. 30, 1994.

The Czech Republic, Hungary, Romania and Slovakia became members of the WTO on Jan. 1, 1995. WTO Website <<http://www.wto.org/wto/about/organsn6.htm>>. Poland became a member on July 1, 1995; Slovenia on July 30, 1995; and Bulgaria on Dec. 1, 1996. *Id.*

⁵⁰⁴ The following countries have applied for WTO membership and are in some stage of the process of negotiation: Albania, Armenia, Azerbaijan, Belarus, Croatia, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Macedonia, Moldova, Russia, Ukraine, and Uzbekistan. WTO Website, *supra* note 503; see generally FRANK W. SWACKER ET AL., 1 WORLD TRADE WITHOUT BARRIERS: THE WORLD TRADE ORGANIZATION (WTO) AND DISPUTE RESOLUTION, sec. 3-2(b) (1996 Supp.).

⁵⁰⁵ See, e.g., Bart Boaden, *A Challenge and an Opportunity for Europe and East Asia*, INT'L HERALD TRIB., Apr. 5, 1996, at 6 ("How can [regional free trade areas] be stopped from becoming so self-absorbed that, faced with increasing fierce competition from emerging economies . . . they turn inward, raise protectionist barriers and drag down the world economy?").

exceptions to the most-favored-nation principle, provided that they cover "substantially all trade" between the member states.⁵⁰⁶ However, most (if not all) of the EU's association agreements with CEECs do not meet this prerequisite, since "sensitive" sectors are excluded from the free trade regime. The EU's Agricultural Commissioner has argued that the EAs are "not simple free trade agreements" and, thus, that concessions granted to the associated countries in Central and Eastern Europe are exempt from the most-favored-nation obligation and need not be extended to other WTO trading partners.⁵⁰⁷ The first question raised by the EU's association strategy

⁵⁰⁶ Article XXIV provides:

4. The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.

5. Accordingly, the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area; *Provided* that:

(a) with respect to a customs union, or an interim agreement leading to the formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union . . . in respect of trade with contracting parties not parties to such union . . . shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union . . . ;

(b) with respect to a free-trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such free-trade area . . . to the trade of contracting parties not included in such area . . . shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area . . . ;

GATT *supra* note 314, art. XXIV.

⁵⁰⁷ *Announcing New Initiatives for Gradual Integration of Central and East European Countries in CAP, Mr. Fischler asks United States Not to Stand in Way of this Trend*, AGENCE EUR., Feb. 24, 1996, at 11 (arguing that "these agreements are simply a stage towards an enlarged EU," Fischler called on the U.S. to refrain from contesting the concessions that the EU was making to the CEECs and from asking for extension *erga omnes*). *But see Poor Relations*, ECONOMIST, May 1, 1993, 54, at 55 (quoting a senior American diplomat as saying "If the United States can give Mexico access for agriculture, textiles and steel, why can't the EC do that for its neighbours?").

It is instructive to compare the EC's attitude towards its own policy of excluding agriculture from its "free trade" agreements, with its attitude towards that same policy when carried out by other countries. For example, Wilhelm Blankert, a trade analyst with the EC Commission in Warsaw, criticized CEFTA on just this basis in 1996. *See Serres, supra* note 311. Blankert has been quoted as saying that "[a] free trade zone should encompass every sector of the economy," and that the "exemption for agricultural products . . . [calls] into question the 'authenticity' of CEFTA . . ." *Id.* (emphasis added). He concluded, in light of the fact that "agricultural and food items accounted for 17% of the inter-regional trade among CEFTA countries" that "[y]ou can't just ignore duties on food items and call this free trade." *Id.*

is thus whether it is compatible with Member State obligations under the multilateral trading regime.⁵⁰⁸

CEFTA, too, must be analyzed in the GATT framework, since all CEFTA countries are (and must be) members of the WTO. As a free trade agreement, the CEFTA Agreement must also satisfy the requirements of Article XXIV of the GATT. As is true of the EU's association agreements, the CEFTA Agreement does not cover "substantially all trade" between its member countries, although it does state cautiously throughout that it is meant to be consistent with the member states' obligations "under other international agreements, in particular the GATT."⁵⁰⁹ Indeed, many provisions of the CEFTA Agreement refer specifically to obligations under the GATT.⁵¹⁰

No amount of technical correctness, however, can resolve the underlying question whether regional and subregional integration subverts or strengthens the global trading system.⁵¹¹ Renato Ruggiero, the Director General of the WTO, believes that preferential regionalism poses a threat to the multilateral system. Ruggiero has called for convergence of "big" regionalism and the multilateral system.⁵¹² In particular, he has urged regional economic groupings to aim for the creation of a global free trade area by moving to abolish all barriers with non-members.⁵¹³

⁵⁰⁸ The WTO committee on Regional Trade Agreements has undertaken to examine a number of the EU's association agreements with CEEC countries, principally the EAs. See WTO Website, *supra* note 503. Full consideration of the WTO procedures for approving free trade areas under Article XXIV of the GATT is beyond the scope of this article.

⁵⁰⁹ See, e.g., CEFTA Agreement, *supra* note 289, art. 23(5), 24.

⁵¹⁰ For example, article 1(1) obliges the member states to "gradually establish a free trade area in ... conformity with Article XXIV of the CEFTA Agreement]." CEFTA Agreement, *supra* note 289. Article 4(2) ties the basic duty rates under the CEFTA Agreement to the rates resulting from the Uruguay Round. *Id.* art. 4(2). The CEFTA member states' exchange of concessions regarding agricultural products is also tied (per Article 12(2)) to the results of the Uruguay Round. The remedies provided for state aids (Article 23), dumping (Article 26), and balance of payments difficulties (Article 32) are also linked expressly to the provisions of the GATT Agreement. See GATT, arts. 12(2), 23, 26, 32. As for government procurement, Article 24(2) of the CEFTA Agreement uses the 1979 GATT Agreement as its benchmark, and Article 24(5) obliges the member states "to endeavour to accede to the relevant Agreements negotiated under the auspices of the GATT." CEFTA Agreement, *supra* note 289, art. 24(2), (5).

⁵¹¹ A thorough analysis of this question must be left for the future. However, there is no shortage of analysis available. See e.g., THE DANGEROUS DRIFT TO PREFERENTIAL TRADE AGREEMENTS (Jagdish Bhagwati & Anne O. Krueger eds.) (1995); Symposium, *Free Trade Areas: The Challenge and Promise of Fair vs. Free Trade*, 27 LAW & POL'Y INT'L BUS. (1996). See also Commission Communication on WTO Aspects of EU Preferential Trade Agreements with Third Countries, AGENCE EUR. DOCS., Feb. 27, 1997.

⁵¹² Guy de Jonquieres, *Ruggiero Urges Global Free Trade: WTO Chief Wants Regional Groups to Wind Down External Barriers*, FIN. TIMES, Apr. 25, 1996, at 6.

⁵¹³ In technical terms, Ruggiero is calling for open (as opposed to closed) regionalism, which implies that members abolish (rather than keep) external barriers at same time as they abolish internal barriers. *Id.* MERCOSUR and APEC are considered to be the only open regional trading blocs. See *id.* See also Boaden, *supra* note 505, at 6 (regional free trade blocs should "expend as much energy on building bridges among themselves as they do on deepening economic integration within their respective economic clubs").

Jacques Delors has articulated the opposing view that regionalism (and subregionalism) should be welcomed. In the context of the EU, he has argued that regionalization of trade "is not at odds with the emergence of the global economy . . . [but rather it] paves the way to a more coherent and more legitimate international order"⁵¹⁴ without "abandoning cultural roots."⁵¹⁵ Delors explains that "progress towards greater global economic integration requires the creation of intermediate regional blocs. . . . When economies become intertwined, their operating rules need to be harmonized too, and this is more easily achieved by regional groupings than by a centralized worldwide process."⁵¹⁶

However the tension is resolved, all economic integration initiatives -- whether global, regional or subregional -- must respect common principles and strive towards a more "legitimate, coherent form."⁵¹⁷ The global conversation within, as well as on the fringes of the WTO framework must find a way to reconcile the dynamic nature of regionalism (and subregionalism) with the overarching obligations of the multilateral trading regime. In such a world, subregional coalescence must become a force for further, fairer integration.

⁵¹⁴ Delors, *supra* note 481, at 716.

⁵¹⁵ *Id.* at 723.

⁵¹⁶ *Id.* at 723. Delors is less convincing when he argues that the EU offers an "example of how to draw up supranational rules through the democratic process." *Id.* at 724. However, we should at least be open to his suggestion that we view the EU as a "laboratory for experiments in sovereignty pooling" and even an "emerging . . . outline of . . . a form of worldwide subsidiarity." *Id.*

⁵¹⁷ *Id.* at 723. Delors also calls for a "new qualitative [institutional] advance." *Id.*